

Gurmail Kaur Vs Darbara Singh and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 26, 2006

Citation: (2007) 3 PLR 393 : (2007) 1 RCR(Civil) 350

Hon'ble Judges: Vinod K.Sharma, J

Advocate: Mr. Sham Lal, Advocate. Mr. S.S. Rangi, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.

The petitioner by way of present revision petition has challenged the order dated 11.2.2006 passed by the learned

Civil Judge (Sr. Divn.), Fatehgarh Sahib, allowing the application moved by Saudagar Ali, respondent No. 2 herein under Order 1 Rule 10 of the

Code of Civil Procedure in a suit filed by Smt. Gurmail Kaur, petitioner herein against Darbara Singh seeking maintenance @ Rs. 4,000/ per

month from the month of January 2003 to February 2005 i.e. Rs. One lac and further maintenance @ Rs. 4,000/ per month. The petitioner also

claimed that a charge on the property of Darbara Singh respondent No. 1 herein be created towards the maintenance payable to her.

2. The applicantrespondent No. 2 had claimed that Darbara Singh respondent No. 1 herein had agreed to sell the land @ Rs. 8,75,000/ per acre

and received Rs. 12 lacs as earnest money. Thus, it was claimed by the applicant that the present suit was filed to deprive the applicant of his

valuable right qua the suit land.

3. The learned trial Court keeping in view the agreement to sell ordered the impleadment of respondentapplicant in the suit.

4. The contention of the learned counsel for the petitioner was that the petitioner herein had claimed maintenance from her husband Darbara Singh,

respondent No. 1 herein and, therefore, the applicant was neither a proper nor necessary party as he can have no interest.

5. It was next contended by the learned counsel for the petitioner that the plaintiffpetitioner was only entitled to maintenance if any, from her

husband, in which the respondentapplicant can claim no interest. The right of the applicant was independent and based on agreement to sell. The

said right has to be independently decided, it is admitted by the counsel for respondent No. 2 that he has already filed a suit for specific

performance. The applicant, therefore, cannot be bound by the order which may be passed in the suit filed by the petitioner. Even otherwise, the

property sought to be sold is of much higher value than the amount of the maintenance claimed and, therefore, his right cannot be affected even if

the suit is decreed as the amount claimed can always be adjusted out of the balance sale consideration. Therefore, it could not be said that the

applicantrespondent No. 2 was a proper or necessary party. It was for the plaintiff to implead the parties being dominus litus and no party can

force himself or herself to be impleaded as a party forcing the plaintiff to contest against him or her.

6. In view of this, the revision petition is allowed, the impugned order is set aside and the application moved by the applicantrespondent No. 2

under Order 1 Rule 10 CPC is dismissed. However, it is made clear that the observations made herein would not affect the right of the applicant to

independently prosecute his remedy of specific performance.