

(2006) 10 P&H CK 0123

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 1028 of 2006

Gurmail Kaur

APPELLANT

Vs

Darbara Singh and another

RESPONDENT

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 plaintiff/petitioner was only entitled to maintenance if any, from her husband, in which the respondent/applicant 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 applicant/respondent 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 applicant/respondent 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.