

RAJASTHAN HIGH COURT

Deva Ram

Vs.

Addl. District Judge, Deedwana

C.W.P. No. 1176 of 2008

(Dinesh Maheshwari, J.)

04.03.2008

ORDER

Dinesh Maheshwari, J.

1. By way of this writ petition the petitioners- applicants seek to question the order dated 14-12-2007 passed by the Additional District Judge, Deedwana in Civil Suit No. 10/2001 whereby, inter alia, their application for impalement in the suit for specific performance has been declined.

2. Briefly put, the facts and aspects relevant for the present purpose as emerging from the material placed on record are that the suit in question has been filed on 1-9-1993 by the plaintiff Omprakash (respondent No. 2 herein) against the defendants Motaram (respondent No. 3 herein) and his sons Ramdhan (since deceased and represented by his legal representatives respondents Nos. 4/1 to 4/10 herein) and Pemaram (respondent No. 5 herein). The plaintiff- Omprakash has alleged the defendants Motaram, Ramdhan and Pemaram having entered into an agreement on 2-9-1990 to sell 100 bighas of southern portion of their agricultural land comprised in Khasra No. 48 at village Audit, tehsil Ladnu to him for a consideration of Rs. 1,00,000/- having received an amount of Rs. 50,000/-, having agreed to receive the remaining amount at the time of registration of sale document, and having executed an agreement in his favor. The plaintiff has further alleged that the defendants were avoiding to execute the sale document despite requests, were seeking to frustrate his rights, and intended to sell the land to someone else for higher price, and while taking other pleas regarding service of notice and his readiness to get the transaction completed, the plaintiff has prayed for the relief of specific performance of the agreement and in the alternative, if the Court would not consider granting a decree for specific performance

because of any reason, for a decree for refund of the amount paid by him with interest @ 18% per annum.

3. The defendants, while denying the plaint allegations have pleaded, inter alia, that the plaintiff was introduced by one Shri Ramvatar son of Budhmal Agarwal, that the defendants stated their terms of selling the land in question for a price calculated @ Rs. 10,000/- per bigha; that the plaintiff himself got prepared the document and obtained the signatures/thumb impressions of the defendants taking them in confidence, that the plaintiff also obtained the signatures of Shri Ramavatar on the said document while stating that the earnest money shall be paid the next morning; that next day, Shri Ramavatar found the plaintiff having gone to Assam without making payment and assured the defendants that upon the plaintiffs return, the deal would be cancelled. The defendants have maintained that the plaintiff got executed the document of agreement without making any payment and the document does not state the terms of deal, particularly of the consideration that was, according to the defendants, settled at Rs. 10,000/- per bigha and not Rs. 1,000/-per bigha.

4. It appears from the observations made in the impugned order that the suit has registered progress in trial and was fixed for final argument on 17-11- 2007 when three applications came to be filed before the learned trial Court. By way of an application under Order 6, Rule 17 of the Civil Procedure Code (CPC) the defendants sought amendment of the written statement, inter alia, for incorporation of the plea that the land in question is an ancestral property received from their ancestor Shri Bheraram (father of the defendant No. 1 Motaram); and while giving the family pedigree, the defendants would assert that all the members of joint family are necessary parties to the suit and that the transaction remains null and void being not for any legal necessity of the family.

5. The present petitioners moved another application under Order 1, Rule 10, Civil Procedure Code (Annex. 3). The petitioner No. 1 Devaram stated himself being the son of the daughter of Bheraram; and the petitioner Nos. 2 to 6 stated themselves being the daughters of Motaram (defendant No. 1). The petitioners-applicants, with reference to the same facts as stated in the application for amendment moved by the defendants, asserted the land in question to be an ancestral property, and while stating their entitlement thereto, alleged that the litigation in question has direct bearing on their rights and their presence would be necessary for effectual and complete determination of the questions involved. Another similar nature application for impalement seems to have been filed by the sons of the defendant No. 3 Pemaram.

6. The learned trial Court has proceeded to reject the aforesaid three applications together by the impugned common order dated 14-12-2007. The learned Trial Court has observed that the matter relates to agricultural land wherein Khatedari rights are allowed under the Rajasthan Tenancy Act and in case of intestate demise of the khatedar, the rights devolve as per personal law; and during the lifetime of the khatedar, his sons and daughters cannot prevent him from alienating the land. The learned trial Court has further observed that the land in question is in the khatedari of Motaram who received the same from his father; that the plaintiff has alleged the agreement for sale having been executed by Motaram and his sons and has filed the suit for specific performance joining them as parties; and hence, there was no necessity to hear the applicants.

7. It may be pointed out that the defendant Nos. 1 and 3 in the suit, Motaram and Pemaram, filed a separate writ petition seeking to question the same order dated 14-12-2007 being S.B. Civil Writ Petition No. 492/2008; but then, had withdrawn their petition on 13-2-2008 with liberty to take resort to other appropriate remedies in accordance with law.

8. Seeking to assail the order dated 14-12-2007 the applicants have preferred this writ petition and learned counsel for the petitioners has argued that the petitioners are directly affected persons having right, title and interest in the land in dispute that was in the khatedari of Bheraram, and the petitioners are his descendants. Learned counsel contended that the petitioners having direct interest in the subject-matter of litigation ought to have been joined as parties to this suit. Learned counsel has referred to and has strongly relied upon the decisions in *Balmukund v. Kamla Wati*,¹ *Gurmauj Saran Baluja v. Mrs. Joyce C. Salim*,² and *Atul Sharma v. Gurinder Singh*,³

9. Having given a thoughtful consideration to the matter, this Court is clearly of opinion that this writ petition remains bereft of substance and deserves to be rejected.

10. Before taking up the central issue, it may be pointed out that the applicants have chosen to take, and repeat, the averments in this writ petition (Vide paragraphs 5 and 9(B) of the petition) as if the petitioner Nos. 2 to 6 are the daughters of Ramdhan. These averments are not compatible with the contents of the application (Annex. 3) as moved before the Trial Court wherein the petitioner Nos. 2 to 6 have been shown as the daughters of Motaram. (In fact Ramdhan, son of Motaram, is shown to have expired and is represented by his legal representatives including his daughters who are the respondent Nos. 4/6 to 4/10 herein.) Such averments in this petition seem to have

been borrowed from an observation made in the impugned order while referring to the relationship of the respective parties. Though such an incorrect observation by the learned trial Court has no material bearing on the core question as to whether the petitioners are required to be joined as parties to this suit but then, the petitioners are supposed to be aware about their status and relationship; and ought to have taken correct pleadings in the writ petition. Then, it is repeatedly stated that the land is recorded in the khatadari of Bheraram whereas Jamabandi for Svt. Years 2024 to 2026, placed on record by the petitioners as Annexure-5, shows that the land has already been mutated in the name of Motaram, defendant No. 1. Be that as it may.

11. Leaving the aforesaid shortcomings and incongruities in the pleadings of the petitioners aside, the crux of the matter remains that the suit in question is the one for specific performance of an agreement to sell, alleged to have been entered into by the defendants-Motaram, Ramdhan and Pemaram. In the fact situation of this case, none else except the plaintiff (the alleged purchaser) and the defendants (the alleged vendors) are the necessary parties to this suit. The application for impalement as filed by the petitioners, who are not the parties to the agreement in question and seek to assert their independent right in the property in question, was fundamentally misconceived and could only have been rejected.

12. The position of law in this regard admits of little doubt or debate. In the case of *Anil Kumar Singh v. Shivnath Mishra*,⁴ the Hon'ble Supreme Court has pointed out that the question before the Court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the Specific Relief Act have been complied with for granting the relief of specific performance; and the Hon'ble Court held, -

"Sub-rule (2) of Rule 10 of Order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party."

(Underlining supplied for emphasis)

13. Apposite it shall be to point out that the principles that in a suit for specific performance the necessary one are the parties to the contract or their legal

representatives or a person who had purchased the contracted property from the vendor with or without notice of contract have come to their fuller exposition in the case of *Kasturi v. Iyyamperumal*,⁵ wherein the Hon'ble Supreme Court said (para 6 of AIR) :

"7. In our view, a bare reading of this provision, namely, second part of Order 1, Rule 10, sub-rule (2), Civil Procedure Code would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party....."

14. In the aforesaid case of *Kasturi* (AIR 2005 Supreme Court 2813), the Hon'ble Supreme Court explained and stated the law in no uncertain terms thus (paras 14 and 15 of AIR):

"15..... Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favor of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favor of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted herein earlier, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of Civil Procedure Code, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favor of the appellant and sale deed is executed, the

stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1, Rule 10, Civil Procedure Code "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants *inter se* or questions between the parties to the suit and a third party. In our view therefore the Court cannot allow adjudication of collateral matters so as to Convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made herein earlier, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale."

(Underlining supplied for emphasis)

15. The decision in *Smt. Tej Kaur v. Jeet Singh*, ⁶ may also be referred wherein this Court has pointed out that any person claiming independent right in the property in question, including the co-owner or coparcener is not a necessary party to the suit for specific performance thus:

"6..... in a suit for specific performance the presence of strangers, including the co-owners or coparceners is not necessary in-as much as, they are not concerned with the relief sought or the defenses raised. The most important thing that protects right of such strangers is that the judgment in such cases is not binding on them. In such suit the Court is called upon to address itself to the relevant issues like the execution of the agreement to sell and its violation. Since such an agreement is executed between the two parties they are the only necessary parties and any dispute will be found existing only between them. Hence the adjudication of such issues will be binding on the parties involved in

the suit and not others including the co- owners. Hence even if such parties are excluded from being impleaded in the suit, no prejudice is caused."

(Underlining supplied for emphasis)

16. So far the decisions cited by the learned counsel for the petitioners are concerned, the decision in *Gurmauj Saran Baluja* (AIR 1990 Delhi 13) (supra) represents the position where a transferee pendente lite was ordered to be joined as proper party. The said decision has no application to the questions involved in the present case. The decision in *Atul Sharma's case* (AIR 1984 Punjab and Haryana 365) (supra) by the Hon'ble single Judge of Punjab and Haryana High Court of course states the proposition that a coparcener could oppose the right of the plaintiff to enforce the agreement of sale against the coparcenary property and as such his prayer for impleadment in the suit for specific performance could be granted but, apart that the said decision stands contrary to the dictum of the Hon'ble Supreme Court as noticed hereinabove, the fact remains that ratio of the said decision of the Hon'ble Single Judge of Punjab and Haryana High Court was overruled by the Hon'ble Division Benches of the same High Court in the cases of *Aman Behal v. Smt. Aruna Kansal*,⁷ and *Krishan Lal v. Tek Chand*,⁸

17. In *Krishan Lal* (supra) the Hon'ble Division Bench said after a survey of the relevant case law that:-

"13. In the result we are of the view that the preponderance of judicial opinion in the country is in favour of the view that in a suit for specific performance of a contract of sale, a person not party to the agreement to sell, and claiming to be joint owner of the subject-matter of the suit, is not entitled to be impleaded as a defendant. He is neither a necessary not a proper party and we fully agree in this view and answer the question posed at the threshold in the negative. We further hold that the decision in *Gurdev Singh v. Paras Ram*,⁹ and *Atul Sharma v. Gurvinder Singh*, 1985¹⁰ do not lay down the correct law and are overruled."

(Underlining supplied for emphasis)

18. Further, the Hon'ble Division Bench of Punjab and Haryana High Court in *Krishan Lal's case* after narrating the fact situation of *Balmukund's* (AIR 1964 Supreme Court 1385) (supra) case observed. -

"9..... It is clear from the above factual narration that the plaintiff had pleaded that all the four defendants were real brothers and constituted a joint Hindu family of which Pindi Das (defendant) was the Karta (manager) and as a

manager of the family entered into a transaction of sale of the property in dispute with the plaintiff and had received earnest money. It is also clear from the pleadings that the plaintiff averred that the defendants (all of them) in spite of being repeatedly asked to receive the remaining sale money from the plaintiff and execute and complete a sale deed in respect of the land in suit had failed to perform their part of the contract and that he was entitled to have specific performance of the contract. The case of the plaintiff was that though the agreement to sell had been executed by Pindi Das defendant, but it was on behalf of the members of the joint Hindu family and all the coparceners had been joined as defendants and a decree for specific performance had been sought against all of them. It was in this context that the Apex Court had made the observations, reproduced above, in Bal Mukand's case (supra). However, it may be highlighted that in Bal Mukand's case (supra) there was no dispute with regard to impleading of the parties. All the coparceners had already been impleaded as defendants and a decree for specific performance of the contract was sought against them. They had naturally to take all the defenses open to them. This decision, with respect to the learned Judge, does not help in construing the true scope of Order 1 Rule 10(2), Civil P.C....."

(Underlining supplied for emphasis)

19. In Aman Behal's case (AIR 1987 Punjab and Haryana 52) (supra), another Division Bench of the Hon'ble Punjab and Haryana High Court has similarly disapproved Atul Sharma's ratio as not laying down the correct law; and has pointed out that Balmukand's case (supra) cannot be taken as an authority holding that in a suit for specific performance coparceners are entitled to be impleaded as defendants.

20. It is evident that Balmukand's case (AIR 1964 Supreme Court 1385) as sought to be relied upon by the learned counsel for the petitioner cannot be read as laying down the principle that in the suit for specific performance, the alleged coparceners are entitled to be impleaded. In the said case, the plaintiff alleged agreement to sell having been executed by the defendant and all the coparceners were joined as defendants and decree for specific performance was sought against all of them. None of the decisions cited by the learned counsel are of any assistance to the claim for impleading of the petitioners in the present suit for specific performance.

21. To sum up, for the law declared in explicit terms by the Hon'ble Apex Court in Anil Kumar Singh (1995 AIR SCW 1782) and Kasturi (AIR 2005 Supreme Court 2813) (supra) without entering into any other aspect, the application as moved by the

petitioners being wholly ill-conceived ought to have been rejected outright.

22. The error, of course, has been on the part of the learned Trial Court in not rejecting such frivolous application with costs. Though in this matter, looking to the overall circumstances this aspect of costs is left at that only; however, it appears appropriate and hence is observed that in the course of a civil suit when the Court is called upon to deal with such application for intervention it would be justified in putting the applicants to adequate terms of costs and taking security for costs even before, taking up the application for consideration.

23. The petition fails and is, therefore, rejected.

Petition dismissed.

Cases Referred.

1. AIR 1964 SC 1385
2. AIR 1990 Delhi 13
3. AIR 1984 Punjab and Haryana 365
4. (1995) 3 SCC 147: (1995 AIR SCW 1782)
5. (2005) 6 SCC 733: (AIR 2005 SC 2813)
6. AIR 1998 Raj 201
7. AIR 1987 Punjab and Haryana 52
8. AIR 1987 Punjab and Haryana 197
9. 1985 Pun LJ 315
10. Rev LR 226