

(2003) 06 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : O.M.P. No. 45 of 2002 in CS No. 42 of 2002

Anup Dutta

APPELLANT

Vs

Krishna Devi and Others

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2003) 3 ShimLC 144

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; Rajnish Maniktala, for Defendant No. 1, Bhupender Gupta and Ajeet Jaswal, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This application has been moved by applicant Anup Dutta under Order 1 Rule 10 of the CPC (hereafter referred to as 'the Code') for adding him as party in Civil Suit No. 42 of 2002.

2. Brief facts relevant for the purpose of disposal of this application are that the said Civil Suit of the Plaintiffs for specific performance of an agreement and possession with consequential relief of permanent perpetual injunction is pending disposal in this Court. Case of the Plaintiffs in brief is that Defendant No. 2 as General Power of Attorney of Defendant No. 1 executed agreement dated 6.12.2001 thereby agreeing to sell to the Plaintiffs two plots of lands measuring 0-8-88-40 Hectares, comprising Khasras No. 5 and 10/1, Khewat Khatauni Nos. 14/104, situate in Mohal and Mauza Gopalpur, Tehsil Palampur for a consideration of Rs. 16,00,000 and received a sum of Rs. 1,00,000 as part of the sale consideration through a cheque dated 6.12.2001. Since the land agreed to be sold is a Tea Garden and Defendant cannot sell it without the permission of the State Government, therefore, it was agreed by the parties that the sale deed would be executed by the Defendants in favour of the Plaintiffs within a period of one month of the grant of requisite permission by the State Government.

Pursuant to the terms of the agreement, Plaintiffs applied to the State Government to accord permission for sale/purchase and the matter is pending with the Government. After the said agreement, the Plaintiffs had always been ready and willing to perform their part of the contract. However, the Defendants with intention to deprive the plaintiffs of their right under the agreement started negotiating for sale of the suit land to certain other persons and the prospective buyers had also applied to the State Government to grant permission to purchase the suit land, the Plaintiffs apprehend that the move of the Defendants is going to prejudice their rights under the agreement, hence, the suit for specific performance of the agreement, possession of the land agreed to be sold and injunction not to sell the suit land to any other person.

3. Defendant No. 1 contested the suit and raised preliminary objections in the written statement that the suit is "collusive qua Plaintiffs and Defendant No. 2", that the suit is bad for non-joinder of necessary parties, that the Plaintiffs have no cause of action, that the suit is based on "such merit which is fraudulent", that the Plaintiffs are estopped by their act, conduct and acquiescence from filing the present suit and the agreement to sell executed by Defendant No. 1 in favour of Faiz Murtaza Ali is well within the knowledge of the Plaintiffs. On merits, while denying the claim of the Plaintiffs it has been averred that Defendant No.2 who was admittedly at one point of time appointed General Power of Attorney by Defendant No.1 started misusing his authority under the power of attorney, therefore, the attorney given to Defendant No.2 was revoked vide revocation deed registered on June 26, 2000 and a registered notice in this regard was served on Defendant No. 2. However, Defendant No. 2 who had been represented by husband of Krishna Devi Plaintiff No. 1 as a counsel in various litigations despite rejection of his application for grant of permission to sell the land without any authority executed the aforesaid agreement in favour of the Plaintiffs with a view to fraudulently deprive Defendant No. 1 of his valuable rights in the land by selling it at throwaway price and leaving no alternative to Defendant No. 1 except to sell whole of his land at throwaway price. It is, therefore, claimed that the alleged agreement in favour of the Plaintiffs being a fictitious and fraudulent document it does not create any right in favour of the Plaintiffs and Defendant No. 1 is under no obligation to execute any sale deed pursuant to such agreement.

4. Defendant No. 2 has not come forward to contest the claim of the Plaintiffs and is ex parte.

5. Plaintiffs filed replication to the written statement of Defendant No. 1 thereby controverting the grounds of defence as taken in the written statement and has reaffirmed the claim, as made out in the plaint.

6. It is against the aforesaid background that the applicant has moved the present application for impleading him as a party to the suit. It is averred in the application that Defendant No. 1 in fact has entered into an agreement of sale of his land to the application for consideration of Rs. 10,00,000 out of which token

amount of Rs. 1100 was paid by him in cash and a cheque dated 28.7.2002 in the sum of Rs. 35,00,000 was also given to Defendant No. 1. However, before encashment of the cheque codal formalities were required to be completed by Defendant No. 1 on or before 28.7.2002. After obtaining the requisite records pertaining to the present suit and perusal thereof, the application felt that the earlier agreement in the suit is outcome of fraud, coercion, misrepresentation and connivance between the parties to the suit with a view to throttle/extinguish the interest of the applicant. It is further averred that to adjudicate the matter completely and effectively presence of the present applicant is necessary and urgent and the decision in the suit in the absence of the applicant will lead to multiplicity of litigation and may cause irreparable loss and injury to the applicant.

7. The application has been resisted by the Plaintiffs as also by Defendant No. 1. The Plaintiffs in their reply raised the preliminary objections that the application is not competent as the applicant is not a necessary or proper party to the suit, that the application is vague, cryptic and uncertain and lacks full particulars, that the suit of the Plaintiffs has no bearing on the alleged claim of the applicant and adding of the applicant as a party is likely to embarrass the trial and raise numerous factual and legal complications. On merits, the averments made in the application have been denied and it is claimed that the application seems to be an act of collusion and connivance between the applicant and Defendant No. 1 so as to defeat the rights of the Plaintiffs and also to raise unnecessary complications. It is further claimed that the averments in the application appear to be actuated by malafide and the applicant has no concern whatsoever with the present suit.

8. Defendant No. 1 in his reply has denied having executed any agreement in favour of the applicant or receiving the earnest money or the cheque as alleged in the application, it has also been denied that the applicant is necessary or proper party or has any right to be impleaded as a party to the suit.

9. The applicant filed rejoinder to the replies filed by the applicant and Defendant No. 1 wherein the grounds of defence as taken in the replies have been controverted and the averments as made in the application has been reiterated.

10. I have heard the learned Counsel for the parties and have also perused the relevant records.

11. It was contended for the applicant that the Defendant had agreed to sell the suit land to the applicant, therefore, he is a necessary party to the suit and his non joinder will lead to multiplicity of litigation, therefore, he deserves to be added as a party to the suit.

12. On the other hand, the learned Counsel for the Plaintiff had contended that there is nothing on the record to show that Defendants ever agreed to sell the suit land to the applicant, further, the applicant is not a necessary or proper party to the suit and the Plaintiff has no concern with him Therefore, the

applicant who has not even spelt in the application as to whether he wants to be impleaded as a Plaintiff or Defendant does not deserve to be added as a party to the suit.

13. The learned Counsel for the contesting Defendant while adopting the arguments of the learned Counsel for the Plaintiff had contended that there is no privity of contract between the Defendant and the applicant, therefore, the applicant, has no cause to be impleaded as a party to the suit.

14. The object of Order 1 Rule 10 of the Code is to have all the persons who are parties to the dispute before the Court so that the dispute is finally and effectively decided. The scope of the Rule, however, is limited only to the cases wherein a person ought to have been joined as a party to the suit but has not been so joined and where presence of such party is essential to enable the Court to effectively and completely adjudicate and settle all the questions involved for determination in the suit. However, the question of addition of parties under the rule is not one of initial jurisdiction of the Court but one of judicial discretion which has to be exercised in a reasonable manner without causing inconvenience and embarrassment and keeping in view the fact that Plaintiff is the dominus litis.

15. The suit in hand is based on an agreement of sale executed by and on behalf of the Defendant No. 1 in favour of the Plaintiff and is for specific performance of such agreement. The applicant admittedly is not a party to the said agreement, therefore, is a stranger to the contract. The general rule is that a person who is a stranger to the contract sought to be enforced is not even a proper party, therefore, such a stranger cannot be impleaded as a party to the suit for specific performance of a contract unless he shows that he has direct interest other than a mere commercial interest in the subject matter of the suit.

16. The subject matter of the suit is the land comprising Kh. Nos. 5 and 10/1 measuring 3-5-1/hectares situate in Mohal Gopalpur, the applicant claims that Defendant No. 1 had agreed to sell the suit land to him vide agreement dated 3.7.2002, therefore, he must be joined as a party to the suit. The claim of the applicant to be joined as a party to the suit is not only opposed by the Plaintiffs but also by the Defendant who has denied execution of the agreement as claimed by the applicant. The alleged agreement in favour of applicant admittedly purports to have been executed after the execution of the agreement, the basis for the suit and the Plaintiffs have no privity of contract with the applicant who is thus not a necessary party to the suit. Moreover, there is nothing in the agreement relied by the applicant to show that the suit land is the subject matter of such agreement.

17. The applicant has also not spelt out as to whether he wants to be joined as Plaintiff or Defendant? Since he has no joint cause of action with the Plaintiff nor his alleged interest is in conformity with the claim of the Plaintiff, therefore, he cannot be joined as a co-Plaintiff, in view of the above conclusions, the applicant has failed even to make out a case for joining him as a Defendant in the suit.

18. As a result, this application merits dismissal and is accordingly dismissed.