

(2018) 02 RAJ CK 0041
In the Rajasthan High Court
Case No : 11647 of 2017

Ashok Kumar S/o Shri Ramkaran

APPELLANT

Vs

Smt. Prema Bai W/o Late Shri Ramesh Chandra & Ors

RESPONDENT

Date of Decision : 22-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 1 Rule 10](#)

Citation : (2018) 02 RAJ CK 0041

Hon'ble Judges : Pushpendra Singh Bhati

Bench : Single Bench

Advocate : Vishal Sharma, OP Joshi.

Final Decision : Dismissed

Judgement

1. Petitioner has preferred this writ petition praying for the following reliefs :-

It is therefore most respectfully prayed that the writ petition may kindly be allowed and :-

(a) By an appropriate writ, order or direction the order dated 25.04.2017 (Annexure-8) passed by Learned District Judge, Merta City in Civil

Suit No. 268/2015 may kindly be quashed and set aside..

(b) Any other appropriate order or direction which this Hon'ble Court considers just and proper in the facts and circumstances of this case may

kindly be passed in favour of the petitioner.

2. Learned counsel for the petitioner states that the petitioner had filed suit for specific performance of contract arising out of the agreement dated

14.11.2008 against the parties to the agreement. Learned counsel for the petitioner further submits that the impugned order is bad as the

application under Order 1 Rule 10 C.P.C. has been allowed for the persons who were not party to the contract. Learned counsel for the petitioner

has relied upon the judgment of the Hon'ble Apex Court passed in the matter of Kasturi. vs. Iyyamperumal & Ors. reported in 2005(2) Civil

Times 67 (SC), the relevant portion whereof, reads as under :-

13. Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether the

respondent Nos.1 and 4 to 11 are necessary parties or not. In our opinion, the respondent Nos.1 and 4 to 11 are not necessary

parties as effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after

the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into

between the appellant and the respondent Nos.2 and 3. In the case of Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru,

reported in 1995(3) SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for

sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at paragraph 9, the

Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale

made the following observation:

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." [Emphasis supplied]

14. As discussed hereinafter, whether respondent Nos.1 and 4 to 11 were proper parties or not, the governing principle for

deciding the question would be that the presence of respondent Nos.1 and 4 to 11 before the Court would be necessary to enable it

effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for

specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the

appellant and the respondent Nos.2 and 3 and whether contract was executed by

the appellant and the respondent Nos.2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos.2 and 3. It is an admitted position that the respondent Nos.1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, the respondent Nos.1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of Vijay Pratap & Ors. Vs. Sambhu Saran Sinha & Ors. reported in 1996(10) SCC, 53, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. 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 the respondent Nos.2 and 3 and in favour 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 the respondent Nos.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 the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.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

hereinafter, since the respondent Nos.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, the respondent Nos.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 the CPC, if

they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent

No.3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract

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

15. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 of the CPC "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 Respondent Nos. 2 & 3 and Respondent Nos. 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

the respondent Nos.1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, the

respondent Nos.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.

18. The learned counsel appearing for the respondent Nos.1 and 4 to 11, however, contended that since the respondent Nos. 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including respondent Nos.1 and 4 to 11, therefore, the same can be settled in the present suit itself. Accordingly, it was submitted that the presence of respondent Nos.1 and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as indicated hereinafter, including the scope of the suit, we are of the view that it lacks merit. Merely, in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract for sale because the respondent Nos.1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief against the respondent No.3 to the contract.

In our view, the third party to the agreement for sale without challenging the title of the respondent No.3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contracted property.

Thus, the learned counsel for the petitioner has made out a case that anything outside the ambit of contract cannot be decided in a suit

for specific performance of contract.

3. Learned counsel for the respondents, however, states that for becoming a party, the only point the respondents ought to have proved was that

they were affected by the relief claimed for by the petitioner. Learned counsel for the respondents further states that the agreement regarding the

same land dated 30.7.2008 was executed between the respondents and other parties. Learned counsel for the respondents further pointed out that

the suit for specific performance of agreement dated 30.7.2008 is already pending where the present petitioner is party.

4. After hearing the learned counsel for the parties and after perusing the material available on record, this Court is of the opinion that two

agreements dated 30.7.2008 and 14.11.2008 were executed for the land in question. Since both the agreements are criss-crossing the disputed

zone of adjudication, therefore, the respondents have rightly been impleaded as party as the agreement dated 30.7.2008 was executed by their

father and, therefore, the respondents claim a right by the agreement in the same land. Learned Court below has rightly held that two agreements

dated 30.7.2008 and 14.11.2008 pertain to the same land and thus, impleadment of the respondents under Order 1 Rule 10 C.P.C. was

necessary.

5. The judgment cited by learned counsel for the petitioner is not applicable in the present facts as the Hon"ble Apex Court has not dealt with two

agreements regarding the same property in question whereas here the total issue is regarding adjudication of two agreements of the same land.

6. Consequently, no indulgence is warranted in the impugned order dated 25.4.2017. The present writ petition is, therefore, dismissed.