

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.M. No. 294-CII of 2015 in/and
C.R. No. 16 of 2015
Date of decision: 09.01.2015

Harwinder

....Petitioner(s)

Versus

Manoj Kumar and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. S.P. Soi, Advocate,
for the applicant-petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 294-CII of 2015

Application for placing on record judgment dated 02.08.2012
as Annexure P-6 is allowed, subject to all just exceptions.

The said Annexure is taken on record.

C.R. No. 16 of 2015

The present revision petition filed under Article 227 of the Constitution of India is directed against order dated 09.12.2014 (Annexure P-3) whereby, the Additional District Judge, Jalandhar has dismissed the application of the petitioner for impleadment in the suit and the appeal. Finding recorded is that in the suit filed by Balbir Singh and others, respondents no. 3 to 5, the claim was regarding the right to suit the property on the basis of Will dated 27.08.1998 executed by Smt. Pushpa Devi. In the said suit, the defendants, who are none other than the brother and sister-in-law of the present applicant, had claimed their title on the basis of another Will dated 25.10.2001 allegedly executed by the deceased in favour of

Manoj Kumar, defendant no. 1. The husband of the present applicant Parveen Pahwa was one of the attesting witnesses of the Will which was set up by her brother and the said witness had appeared before the Revenue Authority also. Thus, a finding has been recorded that the applicant was well aware of the proceedings and did not file any application before the trial Court for impleading herself.

A perusal of the judgment (Annexure P-6) which is the subject matter of appeal before the Lower Appellate Court would go on to show that the suit was filed on 25.08.2004 and the application for impleadment has been filed on 28.10.2014. Thus, in such circumstances, it has been held that the applicant is not a necessary party and by allowing her to be impleaded, it will lead to de novo trial. It has also been further noticed by the Lower Appellate Court that a separate civil suit bearing No. 369 of 2011 has also been filed wherein, she has challenged the decree dated 02.08.2012 which is subject matter of appeal.

Counsel for the petitioner has placed reliance upon the judgment of the Apex Court in *M/s. Aliji Momonji and Co. vs. Lalji Mavji and others, SLJ 1997 (1) 113* to submit that she was a necessary party and and without her presence, no effective and complete adjudication of the dispute could have been made.

After hearing counsel for the petitioner, this Court is of the opinion that there is no valid ground to interfere in the well reasoned order passed by the Lower Appellate court. The facts have already been noticed in detail. The petitioner has already filed a separate civil suit challenging the decree in question which was passed on 02.08.2012 and the application for impleadment had been filed after two years. A perusal of the suit would

go on to show that respondents no. 3 to 5, as noticed, were claiming their rights on the basis of Will etc. The mandatory injunction has, thus, been granted and the defendants in the said suit have been asked to vacate the premises in question. The sole ground for the petitioner in the application under Order 1 Rule 10 CPC is that she is adopted daughter of Pushpa Devi and Shiv Dev Singh and thus, is entitled to their estate. It is settled principle that the principle of dominus litus does not permit a person to litigate against a person against whom no relief is being claimed.

Once respondents no. 3 to 5 were only seeking the relief on the basis of Will and the mandatory injunction was prayed against the brother and sister-in-law of the present petitioner, the Appellate Court was well justified in dismissing the application. If the petitioner has any right as such, she has already chosen to file a separate suit and, therefore, is not a necessary party for the adjudication of the dispute which is now subject matter of appeal. Even otherwise, the conduct, knowledge of the proceedings and relationship has been noticed, which goes on to show that only an effort has been made to delay the benefit of the decree. The reliance upon the certificate issued by the educational institution showing parentage of Shiv Dev Singh is of no use as the same are dated 21/22.08.2014, pertaining to degrees obtained in March, 1978 and April, 1974 and also are duplicate certificates as per Annexures P-4 and P-5 and had never been appended with the application filed for impleadment.

The judgment cited by counsel for the petitioner pertains to a case where notice had been issued by the corporation for demolition and the owner had filed an application for being impleaded as a party. It was accordingly held that the impleadment which had been done by the Court

was right in the facts and circumstances. In the present case, no such right has been demonstrated by the petitioner to be impleaded.

Accordingly, there is no merit in the present revision petition and the same is dismissed.

09.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE