

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1949 of 2015 (O&M)
Date of decision: 20.7.2015

Smt. Sanjana and another

.. Petitioners

v.

Suresh Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. U. K. Agnihotri, Advocate for the petitioners.

Mr. Sanjay Vashishth, Advocate for respondents No. 1 to 3.

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Rajesh Bindal J.

The plaintiffs have filed the present petition impugning the order dated 9.3.2015, passed by the learned court below, whereby the application filed by them under Order 1 Rule 10 CPC for impleading Sneha Lata, as one of the defendants, in the suit was dismissed.

In the case in hand, the petitioners filed a suit, *inter-alia*, for declaration, partition and maintenance. Petitioner No. 1 is widow of Ashwani Kumar, whereas petitioner No. 2 is her minor daughter. Ashwani Kumar is son of Suresh Kumar. The suit was filed pleading that after the death of Ashwani Kumar, the petitioners were turned out of the matrimonial home and share in the joint family property was claimed. Father, brother and sister of deceased-Ashwani Kumar were impleaded as defendants. Objection was taken by the defendants in the written statement regarding non-impleadment of Sneha Lata, mother-in-law of petitioner No. 1, in the suit. The petitioners thereafter filed application for impleading her as one of the defendants. The same having been rejected by the court below, the order has

been impugned in the present petition.

Learned counsel for the petitioners submitted that petitioner No. 1 is widow of late-Ashwani Kumar and petitioner No. 2 is her daughter. Ashwani Kumar died on 24.9.2006 leaving behind the petitioners as his legal heirs, who had to inherit share in the joint family property, however, the petitioners having been shunted out of the matrimonial home, the suit had to be filed claiming share in the property. Father, brother and sister of deceased-Ashwani Kumar were impleaded as defendants, however, mother was not impleaded as no relief was to be claimed against her. The objection was raised by the defendants in the written statement. It was thereafter the application was filed seeking impleadment of Sneha Lata, mother of deceased-Ashwani Kumar, as one of the defendants. The suit is still at the stage of evidence of the defendants. The petitioners have already concluded their evidence and will not lead any further evidence. The grounds, on which the court below has rejected the application, are not legally sustainable as mere delay in filing the application for impleadment of party is not fatal, especially in the cases of family disputes. The interest of mother of deceased-Ashwani Kumar is not different to the interest of other defendants impleaded in the suit. The only relief sought by the petitioners-plaintiffs in the suit is regarding share in joint family property. In support of his plea, reliance was placed upon State of Assam v. Union of India, (2010) 10 SCC 408 and Rupesh Singh v. Pitamber Singh and others, 2013(5) RCR (Civil) 208.

On the other hand, learned counsel for respondents No. 1 to 3 submitted that the suit was filed on 22.4.2009, in which defendants No. 1 to 3 filed their written statement on 16.12.2009, specifically raising a preliminary objection regarding non-impleadment of Sneha Lata as one of the defendants, though she was one of the class-I heirs of late-Ashwani Kumar and was alive. Despite this fact, the petitioners-plaintiffs let the proceedings continue and did not take any step to implead Sneha Lata as one of the defendants. The application was filed nearly five years thereafter in December, 2014, which has rightly been rejected by the court below. The petitioners have vested interest in delaying the proceedings as maintenance

of ₹ 8,000/- per month is being paid to them. The application has been filed merely to fill in lacuna, otherwise the suit would have been dismissed on account of non-joinder of necessary party.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts are that the petitioners filed the suit for claiming share in the joint property, petitioner No. 1 being widow and petitioner No. 2 being daughter of Ashwani Kumar, who died on 24.9.2006. No doubt, in the written statement filed by respondents No. 1 to 3, a preliminary objection was taken regarding non-impleadment of Sneha Lata, mother of the deceased, as one of the defendants in the suit, and the application was filed by the petitioners five years thereafter, when the suit was at the stage of defendants' evidence, still, in my opinion, the same should not have been dismissed only on account of delay and laches. The stand of the petitioners is that they do not want to lead any further evidence. All the defendants have their common interest. The suit is being properly defended by them. The claim in the suit regarding share in joint family property should not be dismissed merely on account of technicality, such as non-impleadment of necessary party. When such an application is filed during the pendency of the suit, opportunity should have been granted for impleadment of necessary party. Merely because the petitioners are being paid maintenance, it cannot be opined that their object is to delay decision of the suit as it is not in dispute that petitioner No. 1 is widow of late-Ashwani Kumar son of Suresh Kumar.

For the reasons mentioned above, the impugned order passed by the court below is set aside. Sneha Lata is permitted to be impleaded as defendant in the suit. The petition stands disposed of, accordingly.

(Rajesh Bindal)
Judge

20.7.2015
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