

CR-2203-2015 (O&M)

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

**CR-2203-2015 (O&M).
Decided on: March 30, 2015.**

Bholu Ram and others

..... Petitioner(s)

Versus

Municipal Corporation, Gurgaon, and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Kunal Dawar, Advocate,
for the petitioners.**

M.M.S. BEDI, J (ORAL)

The petitioners are a plaintiffs in a suit for injunction filed against respondent No.1 Municipal Corporation, Gurgaon and others for permanent injunction restraining the Municipal Corporation from dispossessing the plaintiffs and proforma defendants from the suit property or from interfering in their possession except by due process of law. During pendency of the suit an application under Order 1 Rule 10 CPC read with Section 151 CPC was filed by the plaintiff for impleading Gurmala Jain and Ms.Jaimala Jain as necessary parties to the case as they claim themselves to be owners of the suit property and have asserted title over the property on the basis of inheritance in a separate suit.

Counsel for the petitioners has submitted that the petitioners have filed a suit for injunction against the Municipal

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Corporation claiming that the plaintiffs- petitioners and proforma defendants are tenants in the property in dispute whereas Gurmala Jain and Jaimala Jani have claimed title in the property and have filed a separate suit for permanent injunction and in the alternative for mandatory injunction pertaining to the property mentioned in the heading of the plaint. A copy of the plaint in case Gurmala Jain and another Vs.Bholu Ram and others, has been appended with this petition as Annexure P3. The main grouse of the plaintiffs-petitioners is that suit for injunction filed by the plaintiffs- petitioners had been clubbed with the suit filed by Gurmala Jain etc. Annexure P3. For administrative reasons, learned District Judge, has inadvertently separated the suits while redistributing the cases on appointment of new judicial officers in the District. The application for transfer of both the cases in one Court was filed under Section 24 of CPC but said application has been dismissed vide order dated 9.2.2015, Annexure P4 on the ground that the two suits had been filed on different cause of action relating to the same property but for different reliefs against different parties.

The grievance of the plaintiffs- petitioners is that had both the suits been decided simultaneously all the facts regarding title and claim for injunction on the basis of possession could have been decided inter se the rival claimants by one judgment or two separate judgments delivered by the same Judge simultaneously but on account of suits having been separated it has

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become necessary for the plaintiffs-petitioners to implead Gurmala Jain and Jaimala Jain who claim themselves to be the owners of the property in dispute

I have heard the learned counsel for the plaintiffs-petitioners and carefully gone through the claim of the plaintiffs-petitioners in suit for injunction Annexure P2 and the suit filed by Gurmala Jain and Jaimala Jain against the petitioners and others Annexure P3. The suit filed by the plaintiffs- petitioners for injunction is based on mere possession of the plaintiffs- petitioners in the capacity as tenants whereas the main relief claimed by the plaintiffs-petitioners is against Municipal Corporation, Gurgaon. The suit bearing No.168 was filed by the petitioners in the year 2009 whereas the suit filed by Gurmala Jain and Jaimala Jain has been filed in the year 2010 on the basis of title and possession. The plaintiffs-petitioners are aware of the rights of Gurmala Jain etc. w.e.f. 2008. If they claim that they did not have knowledge about the ownership, then the pleadings of Gurmala Jain etc. in their suit Annexure P3, filed in the year 2010 seeking title by impleading the petitioners as parties are sufficient enough to attribute knowledge to the petitioners at least in the year 2010. The petitioners did not opt to implead Gurmala Jain etc. as party for the last five years and now merely on account of two suits having been segregated, the plaintiffs-petitioners cannot claim that their suit cannot be effectively decided without impleading the persons who are claiming ownership in the

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property. In the suit of the plaintiffs- petitioners, there is dispute regarding the ownership but the claim of injunction is only on the basis of possession. The application under Order 1 Rule 10 CPC, filed by the petitioners if allowed, would entail amendment of the plaint as well as impleadment of Gurmala Jain and Jaimala Jain. The suit is at the final stage. The amendment is impermissible after commencement of the trial in a suit. Besides this, the impleadment of Gurmala Jain and Jaimala Jain does not appear to be necessary for enabling the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. The claim of the plaintiffs- petitioners against alleged original owners can be decided in the suit filed by Gurmala Jain and Jaimala Jain against the petitioners and others (Annexure P3.)

In view of above circumstances, I do not find any ground to interfere in the order passed by the trial Court dismissing the application under Order 1 Rule 10 CPC.

The petition is dismissed.

Nothing said in this order will prejudice the rights of the plaintiffs- petitioners to challenge the order of dismissing the application for transfer of two cases.

March 30, 2015.
rka

(M.M.S. BEDI)
JUDGE