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

Civil Revision No.2228 of 2015

Date of Decision: 08.12.2015

KARAN SINGH AND ORS

.....Petitioners

Vs

**DHOOP SINGH DECEASED THROUGH HIS LR RAJO AND
ANR. ..Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.P.S. Chandel, Advocate
for the petitioners.

Mr. Vivek Khatri, Advocate
for the respondents.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 09.03.2015 (Annexure P-5) passed by Civil Judge (Jr. Divn.) Jhajjar, dismissing the application under Order 1 Rule 10 read with Section 151 CPC for impleading the petitioners as party defendants in a suit for permanent injunction filed by the plaintiffs/respondents (LRs of Dhoop Singh).

[2]. Petitioners are sons of Sumer Singh S/o Nand Singh. The suit for permanent injunction has been filed by Dhoop Singh now through his LRs against Rajender respondent No.2

claiming himself to be exclusive owner in possession of the residential house situated in Mohalla Lalkhania, near Coop. Bank, Jhajjar.

[3]. Plaintiff alleged that he got the aforesaid house from his father Nand Singh in mutual partition, held amongst brothers during the lifetime of their father. Sumer Singh brother of the plaintiff also got the same area of house which abuts to the house in question towards western side. Similarly Dev Karan brother of the plaintiff also got the area from his father and said house is adjoining to the house in dispute towards northern side. Diwan Singh another brother of the plaintiff also got the house from his father which is situated opposite to main bus stand.

[4]. Plaintiff further alleged that the defendant/Rajender son of Dev Karan has got no right to interfere in the house in dispute as he has got a separate house which is adjoining to the house in question towards western side where defendant is residing. Each of the brother is having exclusive possession and ownership of his house. With this background the suit for permanent injunction came to be filed against Rajender.

[5]. In the aforesaid suit the petitioners i.e. sons of Sumer Singh filed application under Order 1 Rule 10 read with Section 151 CPC for being impleaded as party defendants on the

ground that late Nand Singh executed a Will in respect of various properties in favour of his sons namely Dhoop Singh, Sumer Singh, Dev Karan and Diwan Singh. According to said Will, the house in question was given to late Sumer Singh i.e. father of the applicants/petitioners.

[6]. Plaintiff Dhoop Singh was given land in village Bid Sunarwala comprised in *Khewat* No.348, *Khatoni* No.365, *Rect.* No.31, *Killa* No.14/2(6K-0M), 15 (7K-12M) total measuring 13 *Kanals* and 12 *Marlas*. The said land has been mutated in the name of the plaintiff vide mutation No.1193 dated 27.05.1995 on the basis of said Will and plaintiff/Dhoop Singh had sold the aforesaid land in favour of Rampat son of Budhram and Sachin son of Shyamlal vide registered sale deed No.166 dated 11.04.2008. Mutation of this sale deed had also been sanctioned in favour of vendees on 29.04.2008.

[7]. Applicant/petitioners claimed that they have the interest in the property in question and they are entitled to be impleaded in the suit so as to enable the Court to decide the controversy in an effective manner.

[8]. The application was contested by the widow of Dhoop Singh.

[9]. The trial Court vide the impugned order dismissed the application on the ground that in the suit for permanent

injunction no relief has been claimed against the applicant/petitioners. Case is fixed for plaintiff's evidence and the application would change the character of the suit by adding the new parties and applicants are not necessary and proper parties for adjudication of the suit.

[10]. At the time of issuance of notice of motion, the following order was passed by this Court on 23.04.2015:-

“Vide impugned order, an application filed by the petitioners under Order 1 Rule 10 CPC for getting themselves impleaded in a suit for injunction filed by plaintiff- respondent No.1 against Rajinder son of Dev Karan has been dismissed by the trial Court on the ground that the suit is merely a suit for permanent injunction and no relief has been claimed against the petitioners as such they are not necessary parties and suit could be decided effectively without their presence.

With the assistance of learned counsel for the petitioners, I have gone through the copy of the plaint which indicates that the plaintiff respondent No.1 Dhoop Singh now represented through his LRs had filed a suit for injunction on the basis of his title in the suit property mentioned in the plaint. So far as the applicants are concerned, they claimed title in the suit property on the ground that their grand-father Nand Singh had executed a Will dated April 24, 1990 in their favour. With the assistance of counsel, I have taken into consideration the nature of the controversy between the litigating parties. It has been informed that

Nand Singh had four sons i.e. Dhoop Singh, Sumer Singh, Dev Karan and Diwan Singh. During his life time he had executed a Will safeguarding the interests of all the off-springs giving agriculture land at Village Bid Sunarwala to Dhoop Singh. Sumer Singh (father of petitioners) had been given the house in dispute by virtue of a Will alongwith some immoveable articles; Dev Karan, the third son, father of defendant-respondent No.2 had been given land in village Bir. A shop appears to have been bequeathed to Diwan Singh, the fourth son.

Counsel for the petitioners submits that Dhoop Singh, plaintiff - respondent No.1 has sold his land acquired by him through Will and has now filed a suit claiming ownership of the property in dispute by filing a suit against defendant- respondent No.2 who is son of Dev Karan. It is claimed by the petitioners that neither plaintiff nor defendant have got any right, title or interest in the house in dispute and that they being in possession as owners on the basis of the Will annexure P-1 have got a right in it as such they are necessary parties.

*Taking into consideration the above said facts, prima facie it appears that the suit for injunction filed by the plaintiff- respondent No.1 is not merely a suit for injunction on the basis of possession but it is apparently a suit based on a contested title. The petitioners claiming themselves to be in possession of the same in the capacity as owners, prima facie appear to be necessary party. The Apex Court in **Aliji***

Momonji and Company Vs. Lalji Mavji, 1996 (3) RCR (Civil) 537 has observed that a necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The petitioners having a prima facie right, title and interest in the property, appear to be necessary party to the suit for injunction which is based on the alleged title of plaintiffrespondent No.1.

Notice of motion to the respondents for August 3, 2015.

Meanwhile, further proceedings before the trial Court will remain stayed.”

[11]. In the present revision petition, petitioners have attached copy of mutation No.1193 vide which land situated in village Bid Sunarwala has been mutated in favour of Dhoop Singh son of Nand Singh which was sanctioned on 27.05.1995. In column No.13 reference to Will dated 24.09.1990 has been mentioned. The factum of Will has not been pleaded by the plaintiff/Dhoop Singh in the suit.

[12]. Para No.2 of the plaint shows that the plaintiff has claimed exclusive ownership and possession of the residential house in question. It shows that the plaintiff has staked his claim in respect of title over the house in question.

[13]. Learned counsel for the respondents has relied upon **Amritsar Diocesan Trust Association (Regd.), Amritsar vs.**

Amritsar Diocesan Trust Association, Amritsar, 1998(4)

RCR (Civil) 154 to contend that the scope of the suit for permanent injunction is restricted only to the possession. If the suit is only filed to restrain some particular private individuals from interfering in possession of the plaintiff, a decree of injunction can be passed only to that extent and no finding on title or interest can be given in such a suit. Therefore, application filed by the petitioners cannot be allowed as the same is beyond the scope of the relief claimed in the suit and applicants/petitioners are not necessary parties in a suit for permanent injunction.

[14]. The aforesaid case in considered opinion of this Court does not apply to the facts in the present case. Admittedly parties are related being brothers and children. In view of mutation in favour of plaintiff himself, the factum of Will as pleaded by the applicant/petitioners in the application has come to fore. Plaintiff himself is beneficiary of the said Will, but he conspicuously concealed the factum of Will in terms of pleadings of the suit. Plaintiff himself pleaded in the suit that he is owner in possession of the property in question.

[15]. Since the Will is *prima facie* proved to have been given effect in the revenue record as per stand of the applicant/petitioners, the plaintiff himself after acquiring the land

in village Bid Sunarwala has further sold the land to one Rampat son of Budhram and Sachin son of Shyamlal vide sale deed No.166 dated 11.04.2008 and mutation of the said land has been sanctioned vide mutation No.1781 dated 29.04.2008. Since these pleadings are absent in the plaint, the basic fabric of family settlement which has also been pleaded by the plaintiff in the plaint stands vitiated. If the plea of family settlement as pleaded by the plaintiff himself in the plaint is to be appreciated by the trial Court, all the constituent members of the said family settlement/mutual partition have to be heard. Since the applicant/petitioners are one of the constituent member of the family partition as pleaded by plaintiff in para No.2 of the plaint, therefore, no effective adjudication can be made without their participation in the suit.

[16]. Learned counsel for the respondents also cites **Rampat vs. Shri Mandir Thakur Dwara at Suhra and ors., 1998(2) R.R.R. 257, Om Parkash and others vs. Sarv Dharam Ekta Mandir Dharamshala Society and ors., 2010(5) Law Herald 4202, Naresh Kumar vs. Sate of Haryana and others, 1990(2) LJR 144, Ram Singh Sharma vs. Smt. Parmod Kumari and anr., 1992(2) R.R.R.R 163 and Ranbir Singh and another vs. Ran Singh and others, 2006(2) R.C.R. (civil) 278.**

[17]. The plaintiff has claimed possessory title on the basis of title of the suit. In such eventuality, Court would be obligated to decide the nature of possession of the plaintiff based on his plea of title. The natural consequences of such pleadings of the plaintiff would require thorough adjudication of the claim made by him which can only be done if the applicant/petitioners are impleaded and factum of settlement as alleged by the plaintiff himself is proved on record with reference to equitable family settlement of the parties in terms of their entitlement and delivery of shares/properties in pursuance thereof.

[18]. Apparently said family settlement seems to have been implemented in terms of revenue record. Pleadings of the plaintiff are silent about the entitlement of others viz-a-viz. the house in question. In this way, even if the suit of the plaintiff is silent about the claim of the applicant/petitioners, but certainly their entitlement is going to be affected and in their absence it may lead to multiplicity of litigation.

[19]. In view of facts on record, whether plaintiff can claim title over the suit land in the absence of Will pleaded by the applicants would be a necessary factor before the trial Court to adjudicate the matter in its entirety. No effective adjudication is possible in the absence of any such facts which have not been intentionally pleaded in the plaint.

[20]. Parties to the *lis* are brothers. Apparently Will dated 24.09.1990 has also been implemented in terms of revenue record vide mutation No.1193 dated 27.05.1995 in favour of plaintiff himself. Even though plaintiff is *dominus litis* in the suit, however the entire claim of the plaintiff is revolving around his plea of being owner in possession of the house in question.

[21]. Since injunction has been claimed on the basis of title, therefore, title is required to be adjudicated with reference to necessary and proper parties. In such situation it cannot be observed that suit is merely a suit for permanent injunction and no relief has been claimed against the applicant/petitioners and they are not necessary parties for effective adjudication of the case.

[22]. In view of pleadings of the plaintiff and stand taken by the petitioners, it is found that the suit is not merely a suit for permanent injunction on the basis of possessory title of the plaintiff, but evidently it is a suit involving title of the parties.

[23]. Keeping in view the *inter se* relationship between the parties, it is just and expedient to implead the applicant/petitioners in the array of defendants and, therefore, it cannot be said that no relief has been sought against them, rather indirectly their entitlement is going to be affected in case this suit is decided and if the applicant/petitioners are relegated

to resort to any other proceedings that will only lead to multiplicity of litigation *inter se* between the brothers. All issues can be decided in the present suit and, therefore, this Court is of the view that impleading of applicant/petitioners would go in a long way to facilitate the trial Court to adjudicate all the issues arising *inter se* between brothers on account of family settlement in a just and proper manner. Precedents cited by learned counsel for the respondents have their own applications, but not in the context of facts of the present case

[24]. In view of facts and circumstances as stated above, the applicant/petitioners are very much necessary and proper parties. Without their involvement, no effective adjudication can be done by the trial Court.

[25]. In view of aforesaid, I am of the considered view that the application under Order 1 Rule 10 read with Section 151 CPC filed by the applicant/petitioners is worth acceptance. Therefore, impugned order dated 09.03.2015 passed by Civil Judge (Jr. Divn.) Jhajjar is set aside. Revision petition is allowed and applicant/petitioners are ordered to be impleaded as party defendants in the suit. Normal consequences to follow.

December 08, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**