

252

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

**CR No.3406 of 2015 (O&M)
Date of decision: July 27, 2015**

Kamal Sharma

.....Petitioner

Versus

Dharam Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rajeev Dev Sharma, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 25.03.2015, whereby, plaintiffs were permitted to withdraw the suit with liberty to file a fresh one on the same cause of action.

Learned counsel for the petitioner has submitted that the plaintiffs could not be permitted to withdraw the suit to file a fresh one on the same cause of action merely on the ground that all the co-sharers had not been impleaded as a party to the suit.

Order 1 Rule 9 of Code of Civil Procedure, 1908 reads as under:-

“9. Mis-joinder and non-joinder.-No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties

actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.”

Plaintiffs have filed suit for vacant possession. However, all the co-sharers to the suit land had not been impleaded as a party. Parties are yet to lead their evidence before the trial Court. In these circumstances, the trial Court had the option to either permit the plaintiffs to implead all the co-sharers, or permit the plaintiffs to withdraw the suit with permission to file a fresh one by impleading all the co-sharers. The impugned order has not resulted in any injustice to any party as the *lis* between the parties could not be disposed of on merits in the absence of all the co-sharers.

Hence, the impugned order calls for no interference by this Court while exercising revisional jurisdiction.

Dismissed.

**(SABINA)
JUDGE**

July 27, 2015
mahavir