

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

Civil Revision No.3584 of 2015

Date of decision: 25.05.2015

Anil Kumar and another

.... Petitioners

versus

Karan Singh @ Kiran Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jitender S. Chahal, Advocate,
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No

K.Kannan, J. (Oral)

1. The revision is at the instance of a third party to a suit who sought for impleadment claiming that he is himself a co-sharer of the property in Khasra No.990 and that the suit filed by the plaintiff against his brother and persons claiming as tenants cannot be adjudicated in his absence. The petition was dismissed and hence the revision.

2. The counsel states that since he has been shown to be a co-owner with reference to the property in Khasra No.990 in Village Gobindpura, he ought to have been permitted to be impleaded in the suit filed by the plaintiff fraudulently making assertion of his right as though the northern moiety within the prescribed boundaries had

fallen to the plaintiff's share. The contention is that the plaintiff had originally filed a suit for partition of the whole of the property and allowed the suit to be dismissed for default. The petitioner submits that he has himself filed a suit for partition against the plaintiff and his brother-Sulekh Chand who is the defendant in the suit for partition and his suit was dismissed. The petitioner claims that he has preferred an appeal to the appellate Court and the appeal is pending.

3. I have gone through the plaint and I find that the suit makes specific reference to two shops which have been constructed in Khasra No.990 where defendants 2 and 3 are alleged to have been inducted as tenants. The plaintiff's grievance in the suit is that his brother has been collecting rent from the tenants and not sharing with him the income and, therefore, he has asked for separate possession of the property within the boundaries and for making provision for half of the share of the rent from the first defendant, I asked a direct question to the counsel whether he would himself claim ownership over the shops and whether the tenants are his tenants. The counsel would only says that he claims to be owner of the property. If he has already filed a suit for partition with reference to the very same subject matter and his suit has dismissed and has filed an appeal against the same in which the plaintiff and the first defendant are also parties, the adjudication in his partition action

will govern the rights of parties and his alleged right over the shops which have been built thereon. There would simply be no justification for a party to seek for an intervention by an impleadment if the petitioner's right can be adjudicated in the partition action which has been filed in respect of whole of the property. The averment in the plaint itself show that the plaintiff has admitted the petitioner's predecessor-Rishi Pal's right to the property in Khasra No.990 and if there is also an appeal in respect of the subject matter where the property is sought to be divided with reference to whole, it is bound to give a needless confusion by introduction the petitioner when the reliefs are only with reference to the shops and with reference to the northern portion. If the contention were to that the northern portion could not be taken to be already partitioned and in the possession of the plaintiff only, the petitioner's grievance would still be redressed in the suit which he has filed in respect of which he claims there is an appeal pending before the appellate Court. I do not find any prejudice to be resulting in a situation where there is a comprehensive partition action with reference to the very same subject matter. I find no intervention as necessary in such a situation and dismiss the revision petition.

(K.KANNAN)
JUDGE

25.05.2015
sanjeev