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

CR No.4626 of 2015 (O&M)

Date of decision: July 24, 2015

Kuldeep Singh and others

.....Petitioners

Versus

Kartar Kaur (deceased) through his LRs and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.S. Thind, Advocate
for the petitioners.

SABINA, J

Petitioners have filed this petition challenging the order dated 27.02.2015.

Learned counsel for the petitioners has submitted that the plaintiffs could not be permitted to withdraw the suit with permission to file fresh one on the same cause of action as there was no technical defect in the suit. The impugned order had been issued without issuing notice to the petitioners. In support of his arguments, learned counsel has placed reliance on **Goverdhan Dass versus Kishori Lal and others**, 2013 (4) PLR 350, **Pranjivandas Virjibhai and Ors. Versus Pravinkumar Mohanlal Modi**, 2011 AIR (Gujarat) 89 and **Vinod Kumar Gupta versus Ramadevi Shivhare and another**, 2008 (2) M.P.L.J. 151.

Plaintiffs have filed suit for declaration to the effect that they were joint owners in possession of half share of the

suit land. Admittedly, plaintiffs had not impleaded all the co-sharers. The impugned order reads as under:-

“Attorney holder plaintiffs Jagtar Singh, has suffered statement to the effect that there is technical defect in the present case as all the co-sharers mentioned in the jamabandi are not included in the suit, plaintiffs want to add the persons mentioned in the jamabandi as necessary parties, for this reason plaintiffs want to withdraw the present case with permission to file fresh suit on the same cause of action. In view of the statement, present suit is hereby dismissed as withdrawn with permission to plaintiffs to file fresh suit by removing the technical defect. File be consigned to the record room”.

Order 1 Rule 9 of Code of Civil Procedure, 1908 ('CPC' for short) 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.”

The judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioners as they are based on different facts. So far as the judgment of this Court in Goverdhan Dass's case (supra) is concerned, the same is not applicable to the facts of the present case as the impugned order was passed in the presence of the counsel for

the petitioner. So far as the judgment passed in Pranjivandas Virjibhai and other's case (supra) is concerned, in the said case, suit had been filed for possession by the plaintiff on the ground that he was exclusive owner in possession of the suit premises, which had been leased out to the defendants and the defendants had committed various defaults under the provisions of the Act. In the said case, non-joinder of co-owners as parties could not be said to be a formal defect. So far as Vinod Kumar Gupta's case (supra) is concerned, in the said case, the plaintiff had filed suit for declaration against the defendant on the ground of adverse possession. The case of the defendant was that Anil Kumar brother of the plaintiff was tenant qua the disputed property. In the said scenario, the non-joinder of other co-owners could not be said to be a formal defect.

Admittedly, all the co-sharers have not been impleaded as a party to the suit by the plaintiffs.

In the present case, plaintiffs were seeking relief against the other co-sharers also without impleading them as party. Thus, co-sharers, who have not been impleaded as a party to the suit are necessary party. It would not be possible for the trial Court to decide *lis* between the parties on merits in the absence of the other co-sharers. Although, plaintiffs had been negligent in not impleading the co-sharers as a party to the suit despite objection having been taken by the

defendants, but the fact remain that *lis* between the parties cannot be disposed of effectively on merits in the absence of all the necessary parties. Plaintiffs could either have been permitted to implead the co-sharers as a party to the suit, or could have been permitted to withdraw the suit with permission to file fresh one on the same cause of action. The impugned order has not resulted in any injustice to any party warranting interference by this Court while exercising revisional jurisdiction.

Hence, in the facts and circumstances of the present case, the impugned order is just and fair and calls for no interference.

Dismissed.

**(SABINA)
JUDGE**

July 24, 2015

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