

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.5908 of 2009 (O&M)

Date of decision:04.02.2015

Chander Shekhar & others

....Petitioners

Versus

Manjit Kaur & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Sunil Panwar, Advocate, for the petitioners.

Mr.Sandeep Punchhi, Advocate, for respondents No.1 to 3.

Ms.Charu Sharma, Advocate, for
Mr.Raman Sharma, Advocate, for respondents No.4 to 7.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the plaintiff-petitioners, is to the order dated 23.07.2009 (Annexure P6), whereby the application under Order 1 Rule 10 CPC, filed on behalf of the applicant-respondents No.1 to 3, Manjit Kaur, Amarjit Singh and Tej Paul Singh, was allowed by the Civil Judge (Sr.Divn.) Sirsa by holding that they were necessary as well as proper party to be joined in the suit. The reasoning given was that it was still to be found whether the suit land was separate or joint, which was to be proved after leading the entire evidence, since the land-owners were claiming to be co-owners in the land, at this stage, as it could not be discerned as to what was their shares. Since they were co-sharers in the entire holding, the decision of the suit would affect their rights. Challenge has also been led to the subsequent order dated 22.09.2009 (Annexure P9), whereby the review application of the present petitioners was dismissed on the ground that there was no error apparent on the face of the record.

The suit for possession was filed by the predecessor-in-interest of petitioner No.1, seeking possession of the vacant plot, measuring 2 kanals, falling in khasra No.141, as per jamabandi for the years 1995-96, with an area of 11,025 sq. feet, with measurements of 104'6"x104'6", bounded on the eastern side by Simran Hotel, which is owned by the applicants, which has led to the filing of the application. In the suit, a prayer was made that respondents No.4 to 7, M/s Bharat Petroleum Corporation Ltd. should remove the malba and construction and hand over vacant possession, since the land had been leased out to Burmah Shell Oil Storage & Distributing Company, vide registered lease deed dated 10.10.1960. The lease deed had been renewed from time to time, in favour of the said company and the last extension expired on 31.05.2000, which led to the filing of the suit on 25.01.2005. The Petroleum Corporation objected to the suit on various grounds and pleaded that succession certificate should be got from Shri Krishan Chand and Shri Dharamvir, which was controverted by the present petitioners by submitting that they were owners of the property and being legal heirs, were entitled for possession and no succession certificate was required.

The application for impleadment was filed on 17.04.2009, alleging that they were co-sharers in the land in dispute. The same was controverted on the ground that the revenue record had been tampered and no portion of the land had been leased out by the applicants and the said applicants were not co-sharers in the land in dispute, falling in the abovesaid khasra number.

The dispute in question, thus, is regarding the possession of the land which has been leased out and handed-over to the Petroleum Corporation, possession of which was being sought by the lease holders. The Petroleum Corporation had never, as such, opposed the relationship of the lessor and lessee, apart from the fact that the succession certificate was required. By impleading

allegedly, of the parties and the ownership of the applicants.

Counsel for respondents No.1 to 3 has been fair enough to submit that if the present revision petition is allowed, their rights to seek remedy for partition would be jeopardised and he would be satisfied if counsel for the petitioners permits them to agitate for their said rights in separate proceedings, without being bound down by anything observed in the present order.

Keeping in view the above controversy and the site plan (Annexure P15) which has also been placed on record, goes on to show that the applicants' hotel is adjoining the petrol pump in dispute, as pleaded also. The area which is leased out is a compact unit, measuring 105'x105', as per the site plan, though mentioned as 104'6"x104'6" in the plaint. Thus, once the dispute was only pertaining to the lease hold rights, the Trial Court was not right in impleading the respondents as defendant party in the suit in question. The order impugned, thus, cannot be held to be justified, in any manner, since the plaintiff-petitioners were never seeking any relief against the said applicants and was seeking relief against the Corporation. The settled principle of *dominus litis* that once no relief is being asked against the applicants, has, thus, been violated by the Trial Court, while allowing the application. The dispute to be adjudicated upon would totally change the nature of the suit if the applicants are allowed to be impleaded.

Accordingly, the impugned order dated 23.07.2009 (Annexure P6) and the order dated 22.09.2009 (Annexure P9) are quashed and the application for impleadment of the said defendants is hereby dismissed. However, it is made clear that the applicants are at liberty to seek their remedy, in accordance with law, by filing an independent suit for partition, agitating for their rights. Any observations made herein shall not affect their rights as it is only for the purpose of deciding the present revision petition. Since the suit is of the year 2005,

the same, as early as possible.

With the above observations, the present revision petition stands allowed.

04.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE