

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

104

CR 5160 of 2015

Date of Decision:11.09.2015

Raj Pal and others

... Petitioners

Versus

Ram Singh and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Virk, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (Oral)

[1.] Petitioners have assailed order dated 23.07.2015 passed by Additional Civil Judge (Sr. Division), Samalkha vide which application under Order 1 Rule 10 CPC filed by the defendants/counter claimants has been allowed and the application under Order 6 Rule 17 CPC filed by the plaintiffs has been dismissed.

[2.] Defendants while filing written statement to the plaint also filed counter claim to which replication was filed by the plaintiffs. Names of daughters of Kali Ram, Ram Sarup, Pehlada, Kidara and Rattan Singh were disclosed that they are also co-sharers. Necessity arose for defendants to move application under Order 1 Rule 10 CPC for impleading the aforesaid persons as party defendants in counter claim. The suit for declaration is on the premise that plaintiffs being mortgagee become owners by efflux of time. Apparently, the mortgage being usufructuary in nature, no limitation is attracted in getting the same redeemed. Plaint does not show any co-sharer with

the plaintiffs. In the counter claim nature of mortgage has been pleaded as 'usufructuary' for which necessary proceedings have already been initiated before the Revenue Officer.

[3.] Keeping in view the disclosure made by the plaintiffs at subsequent stage, the impleading of aforesaid persons cannot be termed to be result of wrong exercise of jurisdiction by the trial Court.

[4.] In view of aforesaid, no interference is called for in the order passed by the trial Court.

[5.] Dismissed.

September 11, 2015
prince

(RAJ MOHAN SINGH)
JUDGE