

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

CR No. 5973 of 2011 (O&M)

Date of decision: 30.10.2015

Harvinder Singh

... Petitioner

versus

Hardeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Deepak Sharma, Advocate for the petitioner.

Mr. A.S. Barnala, Advocate for respondent No.2.

K.Kannan, J.

The petitioner is the plaintiff who filed a suit for partition and the separate possession of the suit properties on the plea that Mehar Singh was the common ancestor and he was entitled to a share in the property as a person claiming through the son of Mehar Singh. The defendant in suit was the son of Bijinder Singh who in turn was one of the sons of Mehar Singh. It was reported that the plaintiff and the defendant had compromised the matter and before the compromise was sought to be given effect, the 3rd party claiming under a bequest from the widow of one Ajmer Singh brother of Mehar Singh moved an application for impleadment. She sought for transposition of herself as the plaintiff and array the plaintiff as the defendant in suit. The application was ordered. The plaintiff is the revision petitioner before this Court.

The contention of the learned counsel is that the plaintiff who is the *dominus litus* shall alone take responsibility for a suit and after he has entered into a compromise with the defendant, the plaintiff is entitled to either abandon his case or secure the relief as per the terms of compromise and no 3rd party can bring himself on record. His own position as plaintiff cannot be displaced by a 3rd party to the proceedings. This contention is not legally tenable. Considering the

nature of suit as one for partition and separate possession, it has been laid down in several decisions that a nomenclature for the plaintiff and the defendant in the partition action is only for the sake of convenience for otherwise each person cited in the suit in partition is in the position, of the plaintiff. If the property would require to be divided on the basis that the estate of Mehar Singh was to be dealt with, any person who claims under Mehar Singh or admitting the common ownership with Mehar Singh shall have a say in such a partition action. If the 3rd party applicant was claiming in a Will through the widow of Ajmer Singh, her own right was traced to Mehar Singh. It would be best left to the existing suit itself as requiring an adjudication regarding the partibility of the property. If the plaintiff does not want a relief in suit which is instituted, it was fair enough that he was not allowed to prosecute the case any longer but transposed as the defendant. The 3rd party wanting an adjudication on the basis of the Will propounded by him would require to prove the Will that he was relying upon before he could take a relief and the Court was justified in allowing for the impleadment and name him as a plaintiff and transposing the present plaintiff as the 2nd defendant in the suit. The order passed conforms to the proper procedure, to prevent multiplicity of proceedings in relation to the property by taking on bar every person who may be interested in the estate of Mehar Singh.

The order passed is justified and I find no cause for intervention. The civil revision petition is dismissed with above observations.

(K.KANNAN)
JUDGE

30.10.2015
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