

CR No.7123 of 2014 (O&M)

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

**CR No.7123 of 2014 (O&M)
Date of decision:11.02.2015**

Col. R.P.S. Brar

...Petitioner

Versus

Surinder Krishan Ahluwalia and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arun Singal, Advocate,
for the petitioner.

Mr. S.K.Singla, Advocate,
for respondent no.1.

Mr. N.S.Dadwal, Advocate,
for respondents no.2 and 3.

Rakesh Kumar Jain, J.

The petitioner is aggrieved against the order dated 20.09.2014, dismissing his application filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908 to be arrayed as a defendant in the suit filed for declaration and permanent injunction.

At the time of notice of motion, the following order was passed by this Court:-

“Learned counsel for the petitioner submits that respondent No.1, who happens to be former Commissioner of Municipal Corporation, Patiala, filed the writ petition in which an application filed by the

petitioner under Order 1 Rule 10 of CPC to implead him as a party was allowed by this Court.

Grievance of the petitioner is that respondent No.1 while raising construction of the basement of his commercial property, did not keep 5' distance from the property of the petitioner which was causing damage to its foundation. In the said writ petition, the Principal Secretary to Govt. of Punjab, Employment and Generation & Training Department also made a report that respondent No.1 has used his influence while raising construction of basement of his property which is illegal being contrary to the provisions of the Punjab Municipal Corporation Act. However, the said writ petition was disposed of by this Court on the asking of respondent No.1 that his representation pending before the Municipal Corporation, Patiala, may be decided.

Ultimately, the Municipal Corporation, Patiala, dismissed the representation and respondent No.1 filed the present suit for declaration and permanent injunction. The petitioner then filed an application under Order 1 Rule 10 of CPC to become a party therein, but the trial Court dismissed the application on the ground that the plaintiff is a *dominus litus* and the interest of the petitioner would be watched by the Municipal

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Corporation, which is contesting the suit.

It is submitted by the learned counsel for the petitioner that once the petitioner has been found to be a necessary party by this Court in the writ petition, the trial Court should have allowed the application as the construction of basement is ultimately going to adversely affect the interest of the petitioner and not of the Municipal Corporation.

Notice of motion for 11.11.2014.

In the meantime the trial Court is directed to adjourn the case pending before it beyond a date given by this Court.”

It is needless to mention that respondent no.1 had earlier filed CWP No.7200 of 2009 which was disposed of by this Court on 11.11.2013. The said order reads as under:-

“Learned counsel for the petitioner, instead arguing the writ petition on merits, has made an innocuous prayer that his representation is pending before the Municipal Corporation, Patiala regarding grant of reconsideration of revocation order of the building plan No.71 dated 14.5.2008. It is submitted that the said representation may be ordered to be decided in some fixed time frame.

Learned counsel for respondent No.1 has

submitted that the representation shall be decided as directed by this Court.

In view thereof, the present writ petition is disposed of with direction to Municipal Corporation, Patiala to decide the representation of the petitioner, made on the aforesaid subject, within a period of three months by passing a speaking order after associating the petitioner as well.”

Since the representation made by respondent no.1 was dismissed by respondent no.2, the suit for declaration and permanent injunction was filed by him in which the petitioner filed an application to become a party as the construction being raised by respondent no.1, is threatening to cause damage to the foundation of his property but the learned Court below dismissed the application only on the ground that the plaintiff is the *dominus litus* and the Municipal Corporation/respondent no.2 is contesting the suit.

Counsel for the petitioner has argued that once he was allowed to be impleaded as a party in the writ petition filed by respondent no.1, then he should also be impleaded as a party in the suit filed by respondent no.1 in which he has challenged the action of respondent no.2, initiated at his instance.

Counsel for respondent no.1, however, has argued and supported the order of the Court below on the ground that the petitioner is neither a necessary nor a proper party and has rightly not been impleaded.

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After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the learned Court below has committed a patent error in dismissing the application of the petitioner. The petitioner had been impleaded as a party in the writ petition when his application bearing CM No.5717 of 2010 was allowed in the following manner:-

“This is an application under Order 1, Rule 10 CPC moved by Col. R.P.S. Brar for his impleadment as respondent in the array of parties. Mr. Raina, learned counsel for the applicant, submits that building in question is situated adjacent to the plot owned by the applicant and thus, he is a necessary party to enable the court to completely and effectually to adjudicate upon the issue.

The prayer for impleadment is opposed by learned counsel for the petitioner. However, for the reasons stated in the application, I feel the applicant is a necessary party. Thus, the application is allowed and applicant is directed to be impleaded as respondent No.3 in the array of parties. Registry is directed to carry out necessary corrections.”

Once the petitioner has been found to be a necessary party in the writ petition on the ground that the building in question is situated adjacent to the plot owned by the petitioner who is having an apprehension

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that the construction of the building by respondent no.1 may cause some kind of damage to his property, he would definitely be a necessary party in the suit filed by respondent no.1.

In view thereof, the present revision petition is hereby allowed and the impugned order is set aside.

February 11, 2015
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(Rakesh Kumar Jain)
Judge