

IN THE HIGH COURT OF PUNJAB AND HARYANA,
CHANDIGARH

247

CR -8168-2014 (O&M)
DATE OF DECISION:11.12.2015

RAJINDER PAL SINGH GILL AND ORS.

....Petitioners

VS.

JARNAIL SINGH AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.D.S. Sukhija, Advocate
for the petitioners.

Mr. Vijay Sharma, Advocate
for respondents.

AMIT RAWAL, J. (ORAL)

Petitioners-plaintiffs are aggrieved of the order whereby the application filed under Order 6 Rule 17 read with Order 1 Rule 10 of the Code of Civil Procedure seeking amendment of plaint and impleadment of the Punjab Wakf Board has been declined.

Mr. Sukhija, learned counsel appearing on behalf of the petitioners submits that in the year 2013, suit for permanent injunction seeking a restraint order against the respondent-defendant was filed. However, on receipt of written statement-counter claim it transpired that the respondents have set up a plea of lease deed dated 04.07.2013 by virtue of which they have allegedly been given on lease of the property in dispute. It is in these circumstances the impleadment of the Wakf Board has been

sought.

Mr. Vijay Sharma, learned counsel appearing on behalf of the respondents-defendants submits that in order to seek a declaration or file a suit against the Wakf Board a notice under Section 89 of the Wakf Act, 1995 is required to be served. Thus even if the amendment is allowed, the suit against the Wakf Board would not be maintainable. Learned counsel in his contention has relied upon a judgment of this Court rendered in **Ram Partap vs. Punjab Wakf Board, Ambala Cantt and others 2007 (Volume 2) Local Act Reporters**. Learned counsel submits that mandatory injunction has been sought to recover the possession of land measuring some portion which is alleged to be in possession of the petitioners-plaintiffs. The amendment would totally alter the character and nature of the suit which is not permissible. He further submits that joint application by invoking the provisions of the Code of Civil Procedure, is not maintainable in view of ratio of law culled out in **“Nirmal Singh & Ors. Vs. Tarsem Singh & Ors.” 2014 (Volume 4) Civil Court Cases 670.**

I have heard learned counsel for the parties and appraised the paper book.

The amendment sought to be incorporated reads thus:-

i. In the array of parties to the suit, the following party is to be impleaded as defendant No.3:

“Punjab Wakf Board, 1062-63, Sector 22B, Chandigarh, through Chief Estate Officer and Estate Officer, Patiala”.

ii. The following words are to be added in the head note of the plaint.

“and further suit for declaration to the effect that the lease order dated 04.07.2013 passed by the Punjab Wakf Board, defendant No.3, in favour of defendant No.1 and 2 of the land measuring 1831.62 Sq. Yards is illegal, null & void, without jurisdiction and is liable to be set aside and ignored.”

iii. The following para is to be added as Para 10A

“10A. That in the written statement filed by the defendant No.1 & 2, it has been claimed that Punjab Wakf Board has passed an order dated 04.07.2013 whereby property measuring 1831.62 Sq. Yards has been ordered to be leased out to the defendants w.e.f. 01.06.2013 at the rate of Rs.20,000/- per month for the period of 33 months and this order was not in the knowledge of the plaintiffs earlier and it has come to their knowledge only after the filing of the written statement by the defendant. The said order dated 04.07.2013 passed by Punjab Wakf Board in favour of the defendants is illegal, null & void without jurisdiction and is liable to be set aside and ignored as the land is already on lease with the plaintiffs and the earlier lease deeds are still in existence and have not been cancelled. The possession under the alleged lease order dated 04.07.2013 has neither been transferred nor it could be transferred as the plaintiffs are in possession of the suit property.”

iv. That para 12 is to be substituted as follows:-

“That the suit is valued for the purpose of court fee and jurisdiction at the rate of Rs.195/- for declaration and Rs.130/- for permanent injunction and as such, a court fee stamp of Rs.100/- has been affixed.”-

v. That the prayer clause is also be suitably amended by adding the following lines:-

“and a decree be passed for declaration to the effect that the lease order dated 04.07.2013 passed by the Punjab Wakf Board, defendant No.3, in favour of defendant No.1 & 2 of the land measuring 1831.62 Sq. Yards is illegal, null & void, without jurisdiction and is liable to be set aside and ignored.”

It is a matter of record that the application for amendment was filed after the respondent-defendant filed the written statement. This Court while deciding the application of seeking amendment in the plaint is not to comment upon the merits and demerits of the suit. The amendment sought in my view would not alter the nature of the suit rather it would avoid the multiplicity of the litigation and since the respondents have also set up lease, executed by Wakf Board, thus, Wakf Board would also be necessary part. The law on impleadment of a party whether, necessary or essential has

been laid by Hon'ble Supreme Court in "*Thomson Press (India) Ltd. V/s Nanak Builders and Investors (P) Ltd. & others*" 2013 (5) SCC 397.

In view of the aforementioned, the impugned order is set aside and much less the application for impleadment of the Wakf Board is accordingly allowed. The impleadment of the Wakf Board shall be subject to the provisions of Article 21 of the Limitation Act.

Civil Revision petition is allowed.

(AMIT RAWAL)
JUDGE

December 11, 2015.
SwarnjitS