

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

**CR No. 2103 of 2016**

**Date of decision :21.03.2016**

**Balwinder Singh**

**..... Petitioner**

**Versus**

**Chandan Ram and others**

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.Rakesh Gupta, Advocate  
for the petitioner.

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**DARSHAN SINGH, J. (Oral)**

The present revision petition has been preferred against the order dated 08.12.2015 passed by the learned Civil Judge (Sr. Division), Patiala, whereby respondents no.1 to 5 and 7 have been allowed to be impleaded as co-defendants in the suit by allowing the application under Order 1 Rule 10 read with Order 22 Rule 10 and Section 151 of Code of Civil Procedure, 1908 (for short 'C.P.C').

2. Learned counsel for the petitioner contended that the plaintiff-petitioner has filed the suit for declaration to the effect that he is owner in possession of the properties left by Smt. Sardhi wife of Hari Ram on the basis of the Will dated 17.03.2006 and had challenged the order passed by the

Revenue Authorities with regard to the ownership and sanction of mutation in favour of defendants. He has also challenged the Will dated 25.09.2005 alleged to be executed by Smt. Sardhi in favour of defendant being illegal, null and void and not binding on the rights of the plaintiff. He contended that respondents no.3 and 4 had already filed the suit for joint possession as well as declaration, wherein they had challenged both the Wills dated 25.09.2005 and 17.03.2006. But, the said suit was dismissed under Order 9 Rule 8 C.P.C by the learned Additional Civil Judge (Sr. Division), Patiala, vide order dated 09.07.2014. Similarly, defendant no.1-Chandan has also filed a suit bearing civil suit no. 367T/09 of 24.03.2008 against the petitioner challenging the Will dated 17.03.2006, which was dismissed on merits under Order 17 Rule 3 C.P.C, vide judgment and decree dated 09.12.2009. Thus, he contended that respondents no.1, 3 and 4 were precluded from filing the fresh suit. The order passed by the Court under Order 9 Rule 8 CPC also amounts to decree. So, their claim is barred by principle of *res judicata* and they have been wrongly impleaded as defendants in the present suit. He contended that in the present suit, the dispute was only between the petitioner and respondent no.6-Karnail Singh. Thus, respondents no.1 to 5 and 7 were not the necessary or proper parties.

3. I have duly considered the aforesaid contentions.

4. This fact is not disputed that the Wills dated 17.03.2006 in favour of the petitioner and 25.09.2005 in favour of respondents no.6-Karnail Singh are alleged to have been executed by Smt. Sardhi. Said Sardhi is the mother of respondents no.1 to 5. The real dispute in the suits is about the inheritance to the estate left by Smt. Sardhi. So, respondents no.1 to 5 being the natural heirs of said Sardhi were necessary and proper parties to the present suit and their presence was necessary for the determination of the real matter in dispute and to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. So far as the plea raised by learned counsel for the petitioner that as the suits filed by respondents no.1, 3 and 4 were already dismissed and principle of *res judicata* operates against them is a mixed question of law and facts which is to be adjudicated upon by the learned trial Court on appreciation of the pleadings and evidence. Thus, no fault can be found with the impugned order.

5. Consequently, the present revision petition having, no merits, is hereby dismissed.

**21.03.2016**

S.khan

**(DARSHAN SINGH)**  
**JUDGE**