

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

**CR No.2259 of 2013
Decided on: 20.05.2016**

Pakka Thakur Dawara

....Petitioner

Versus

Harpal Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Deepender Singh, Advocate
for the petitioner.

Mr. D.S. Gurna, Advocate
for the respondents.

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

The present petition lays challenge to order dated 25.01.2013 (Annexure P-1) passed by the Civil Judge (Jr. Division), Dera Bassi, allowing the application of respondent No.3 filed under Order 1 Rule 10 of the Code of Civil Procedure (in short 'CPC') for permitting him to contest the suit.

Pakka Thakur Dawara (in short 'Thakur Dawara') village Lalru, Tehsil Dera Bassi through Sh. Gulab Singh son of Jagir Singh filed a suit for permanent injunction against Harpal Singh, Kiranpal Singh sons of Prem Singh (defendants) restraining them from

interfering in peaceful possession of the plaintiff or changing nature of suit land measuring 41 bighas 16 biswas detailed in headnote of the plaint, by raising construction. It has been averred that the plaintiff committee is a juristic body registered under the Societies Registration Act, formed for the benefit and to look after affairs of the properties, etc. of Thakur Dawara of village Lalru. In Thakur Dawara, there are idols of Shri Thakurji, Shri Hanumanji and Shri Ram Parivar worshiped by residents of village Lalru. The Thakur Dawara also has agricultural land measuring 41 bighas 16 biswas. The defendants are trying to interfere in peaceful possession of suit property without any right, title or interest.

Respondent No.3 filed the application for impleading as a party. It is averred that the applicant is the owner in possession of Thakur Dawara. Earlier, Ram Balak Dass Chella Ayudhya Dass Chella Brij Bhushan was owner of suit land and Mahant Ram Balak Dass died on 10.09.1989 and after his death, the property vested with the applicant vide *majornama* dated 23.09.1989 and also by way of Will dated 20.08.1985 executed by Ram Balak Dass and the same is clear from the judgment and decree dated 02.09.1985 whereby the applicant has been declared as Chella of Ram Balak Dass and also has succeeded to property of Ram Balak Dass. It has further been averred that the alleged society is a fake society formed by a gang of persons of village Lalru to usurp the property of Thakur Dawara.

After filing of reply to the application by the petitioner/plaintiff and having heard counsel for the parties, the learned trial Court held that the applicant is a necessary party in the present suit

as any order passed by this Court will indirectly effect him. However, the question of vacation of *status quo* order would be determined at the time of deciding application under Order 39 Rules 1 and 2 CPC.

Counsel for the petitioner has submitted that the suit has been filed by the Thakur Dawara to seek an injunction against Harpal Singh and Kiranpal Singh from interfering in possession of the property of Thakur Dawara or raising any construction thereon, therefore, the cause of action is personal in nature against the persons already arrayed as defendants. Another submission made by counsel is that the petitioner being *dominus litis* cannot be forced to add any person as defendant against whom the petitioner is not claiming any relief. It has further been argued that as per Annexure P-8, property of Mandir Thakur Dawara is situated at village Lalru Hadbast No.218 Tehsil Dera Bassi. Ram Balak Dass who was earlier managing the property was Chella of Ayudhya Dass (since deceased). The trial Court has allowed Gopal Dass Chella Ram Balak Dass to be impleaded as party on the ground that he was shown as Mohtmim of the property situated at Tehsil and District Ambala. It is argued that in document Annexure P-14 Gopal Dass is the Chella of Ram Balak Dass Chella of Janki Dass Chella of Bhagwan Dass whereas in Annexure P-8 copy of Jamabandi for the year 2005-06 in respect of the suit land, Ram Balak Dass has been recorded to be Chella of Ayudhya Dass Chella of Brij Bhushan Dass.

Counsel for the contesting respondent (respondent No.3) has supported the impugned order with the submissions that the learned trial Court has rightly relied upon the decision dated 20.09.1985

rendered in Civil Suit No.364/C/S 23.8.85 to accept plea of the respondent that his presence is necessary in the lis as any order passed by the Court will effect him indirectly.

I have heard counsel for the parties, perused the paperbook particularly the application under Order 1 Rule 10 CPC, reply thereto, the impugned order and the various annexures placed on record.

The present suit has been filed by Thakur Dawara to seek restraint against Harpal Singh and Kiranpal Singh *qua* interference in possession of suit property or raising construction thereon. The plea of the petitioner is that the property belongs to Thakur Dawara but the same is managed by a society. The society has not claimed any right of ownership in the property alleged to be owned by the Thakur Dawara. The present suit is a simplicitor suit for injunction restraining the defendants from interfering in possession or raising construction. Keeping in view the nature of the suit and injunction being a personal cause of action coupled with the factum that no relief in the suit has been sought against respondent No.3 nor determination of rights of ownership has been sought for, I find myself unable to accept the contentions of respondent No.3 or to sustain the impugned order that presence of Gopal Dass – respondent No.3 is necessary either for complete and effective adjudication of the matter in controversy or to protect his interest in the suit property. Counsel for the contesting respondent is not in a position to controvert that in the document (Annexure P-14) in respect of land situated in Ambala, Ram Balak Dass has been recorded to be Chella of Janki Dass but in the Jamabandi pertaining to the suit land for the year 2005-06 (Annexure P-8) Ram

Balak Dass is recorded to be Chella of Ayudhya Dass and further Chella Brij Bhushan Dass. The judgment dated 20.09.1985 also pertains to claim of Gopal Dass against Sh. Ram Balak Dass Chella Sh. Janki Dass Chella Sh.Bhagwan Dass. In the given facts and circumstances, the order passed by the trial Court cannot be allowed to sustain and accordingly set-aside.

For the foregoing reasons, the petition is allowed, the impugned order is set-aside and the application filed by respondent No.3 for impleading him as a party in the suit is ordered to be dismissed. However, nothing stated in this order shall cause prejudice to the rights of respondent No.3 to seek any relief *qua* his claim to the suit property in an independent proceedings.

20.05.2016
yakub

(REKHA MITTAL)
JUDGE