

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

Civil Revision No.2736 of 2013

Date of decision: December 16, 2016

Smt. Mohinder Kaur and another

...Petitioners

Versus

Karam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ashwani Chopra, Senior Advocate with
Mr. Ankit Midha, Advocate for the petitioners.

Mr. Puneet K. Jindal, Senior Advocate with
Ms. Sakshi, Advocate for respondents No.1 to 5.

Rajan Gupta, J.

Present revision petition has been preferred against the orders dated 14.02.2003 and 03.04.2013, passed by Civil Judge (Jr. Division), Ludhiana, whereby application filed by the plaintiff under Order 1 Rule 10 and Order 6 Rule 17 CPC has been allowed and application moved by the petitioner/defendants No.1 & 2 for deleting para 17-B of the amended plaint, has been dismissed.

Learned senior counsel for the petitioners has assailed the order. He has submitted that impugned orders are unsustainable as Rajinder Kaur who was sought to be impleaded as party, was already aware that in the absence of Rajinder Kaur, the suit was not maintainable. Thus, at this stage she cannot be impleaded as party to the suit. He has further submitted that the trial court has wrongly dismissed the application filed by the petitioners under section 151 CPC for deletion of

para No.17-B of the amended plaint as the same is contrary to order dated 14.2.2013, which only allows amendment of plaint by insertion of para 17-A in the plaint.

Prayer has been opposed by learned senior counsel appearing for respondents No.1 to 5. He has submitted that Rajinder Kaur was necessary party, as defendants themselves in their written statement have raised preliminary objection that she had not been made party, therefore, she has rightly been impleaded as party by the trial court. He has further submitted that the trial court did not find any ground for deleting any para of the amended plaint, thus, application filed by the petitioner in this regard was dismissed by it.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Counsel for the parties have addressed the court at length on merits. In opinion of this court, only question involved is whether Rajinder Kaur is a necessary party to the litigation or not. Briefly, recapitulating facts, it may be mentioned that plaintiff/respondents No.1 to 5 filed a suit for declaration and perpetual injunction on 30.10.2004 against the petitioners and others, challenging decree dated 24.09.1994, passed in civil suit titled as “Mohinder Kaur Vs. Pritam Singh” on the ground of fraud. During pendency of the suit, instant applications, under Order 1 Rule 10 and Order 6 Rule 17 CPC for impleadment of Rajinder Kaur as a party and another for amendment of the plaint, were moved by plaintiff/ respondents No.1 to 5. The trial court allowed the said application, vide order dated 14.02.2013. It dismissed the application

filed by the petitioners for deleting para 17-B of the amended plaint, vide order dated 3.4.2013.

Suit was instituted by Chinto. Hira Singh is stated to be common ancestor of the parties. Rajinder Kaur claims that she inherited the estate of Pritam Singh son of Hira Singh. Her impleadment is, therefore, necessary to completely and effectually adjudicate upon the issue. I find that order allowing the plaintiff to amend the plaint and adding paras 17-A and 17-B to the plaint does not suffer from any infirmity. Admittedly, application was moved when the trial was yet to commence. No prejudice will be caused to the petitioners by impleadment of Rajinder Kaur. On the other hand, same may be in order to avoid multiplicity of litigation. This court need not refer to various judgments referred to by counsel for the parties in view of the fact that it is only deciding the question whether Rajinder Kaur is a necessary party and has been impleaded at the stage when trial has not commenced. As both the questions are being answered in affirmative, the present petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

December 16, 2016
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No