

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

CR No.5672 of 2014
Date of decision : 12.07.2016

Kusum Pandhi

...Petitioner

Versus

Ram Ji Dass Mehta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. T.N. Sarup, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-applicant is aggrieved of the order, whereby application under Order 1 Rule 10 of the Code of Civil Procedure in suit seeking partition by way of joint possession, has been declined.

Mr. T.N. Sarup, learned counsel appearing on behalf of the petitioner submits that petitioner, during the pendency of the suit, had purchased the share from the erstwhile co-sharers and, therefore, the right and title as per provision of Order 22 Rule 10 of the Code of Civil Procedure, has been divested. The incorrect mentioning of the provisions of law in the application is immaterial for the adjudication of the lis though the application should have been treated as per the provision of Order 22 Rule

10 of the Code of Civil Procedure. The Court has declined the application on the premise that earlier application filed under Order 1 Rule 10 CPC has been decided, for, the alienation of the property has taken place during the pendency of the suit. He further submits that order should not come in the way of the petitioner as for the proper and factual adjudication, petitioner is necessary and appropriate party. As per the case set out by the other party, it has been submitted that once application of the respondent has been declined, rightly so, application has been dismissed. Order under challenge is perfect, legal and justified.

I have gone through the paper book and of the view that for the proper and factual adjudication of the lis, petitioner who is assignee of share and particularly the suit is for partition claiming joint possession, her right would be effected in case she is not allowed to defend her suit. Dismissal of the application at the instance of the respondent-plaintiff should not come into the way of the petitioner as plaintiff had, on previous occasion, brought the factum of alienation. Rather Trial Court ought to have allowed the application. It is a matter of record that previous defendant had passed on the title by way of share. The plaintiff would not have any interest in the suit in case the petitioner is not permitted to join as defendant as there is every likelihood that adverse order may not be passed.

In order to prevent mis-carriage of justice and manifest in justice, I deem it appropriate to allow the application and the petitioner should be given right to contest the suit as defendant.

Accordingly, impugned order is set aside. Application is allowed.

Petitioner is allowed to join the proceedings. Since the erstwhile owner has already contested and file the suit, thus, the petitioner is permitted to join the proceedings from the stage suit was pending. She shall be given liberty to file affidavit in examination-in-chief to put across the defence.

Revision petition is allowed in the aforementioned terms.

12.07.2016

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**(AMIT RAWAL)
JUDGE**