

CR No. 6028 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

CR No. 6028 of 2016

Date of Decision:15.9.2016

Sohan Singh

---Petitioner

vs.

Gurmukh Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Vijay Lath, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition has been directed against order dated 3.8.2016 passed by the Civil Judge (Junior Division), Shaheed Bhagat Singh Nagar whereby application of the petitioner filed under Order 1 Rule 10 of the Code of Civil Procedure (in short "CPC") for impleadment as a party has been dismissed.

Gurmukh Singh, respondent No. 1 filed a suit for possession of

property bearing plot No. 7, detailed in head note of the plaint, on the basis of conveyance deed dated 29.5.1981 registered on 23.7.1981. In the said suit, Hardev Kaur wife of Avtar Singh son of Mohan Singh, Sukhpal Singh and Baljit Kaur children of Avtar Singh have been arrayed as defendants.

Counsel for the petitioner has submitted that in the written statement filed by Avtar Singh, it has been averred that Sh. Mohan Singh was owner in possession of the suit property who executed a valid registered Will dated 2.12.2009 in favour of Sukhpal Singh and Baljit Kaur children of Avtar Singh. It is argued that as Sh. Mohan Singh was the brother of present petitioner and also had other brothers and the petitioner is entitled to 1/5th share in the estate of Sh. Mohan Singh, a serious prejudice is likely to be caused to the petitioner in case he is not impleaded as a party because any finding recorded by the trial court qua the Will set up in favour of Sukhpal Singh and Baljit Kaur may deprive the petitioner of his claim to the extent of 1/5th share in the property left behind by Mohan Singh.

I have heard counsel for the petitioner, perused the paper book particularly the application filed by the petitioner, reply thereto and the order impugned.

Order 1 Rule 10 CPC provides for suit in name of wrong

plaintiff. Sub Rule 2 of Rule 10 empowers the Court to strike out or add parties. A relevant extract from sub Rule 2 of Rule 10, germane to the controversy, is extracted hereinbelow for ready reference:-

“Court may strike out or add parties.- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

Firstly, the respondent-plaintiff is a dominus litis and he cannot be forced to array a person as a defendant against whom he does not claim any relief. Secondly, the petitioner cannot be allowed to be impleaded as a party and to enlarge the scope of suit by raising a dispute inter se the defendants with regard to inheritance to the estate of deceased Mohan Singh. Counsel has not advanced any meaningful arguments as to how in absence of the petitioner, the Court would not be in a position to effectually and completely adjudicate and settle all the questions involved in the suit.

This apart, it is not the plea of the petitioner that he is in possession of any part of the suit property. Even otherwise, if he is in possession of the suit property in his independent right and eventually a decree is passed in favour of Gurmukh Singh, the petitioner may take recourse to appropriate remedy, in accordance with law in proceedings for execution of the said decree. Analyzed from any angle, I find myself unable to accept the submissions that the petitioner is entitled to be impleaded as a party by invoking the provisions of Order 1 Rule(10)(2). However, it is clarified that as the petitioner has not been impleaded as a party in the suit filed by Gurmukh Singh, any judgment passed in the suit would not be binding against the petitioner.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

15.9.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No