

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 7600 of 2015 (O&M)

Sudesh Kumar ... Petitioner(s)

Versus

Ramjilal and Others ... Respondent(s)

2. Civil Revision No. 7612 of 2015 (O&M)

Sunder Lal ... Petitioner(s)

Versus

Ramjilal and Others ... Respondent(s)

AND

3. Civil Revision No. 7620 of 2015 (O&M)

Ram Kumar ... Petitioner(s)

Versus

Ramjilal and Others ... Respondent(s)

Date of Decision : 30.03.2016

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

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Present: Mr. Kunal Dawar, Advocate
for the petitioner(s).

Mr. Madhu Ranjan, Advocate
for respondents No.1 to 3.

Mr. Rakesh Dhiman, Advocate
for respondents No.4 and 5.

Shekher Dhawan, J.

This order of mine shall dispose of three revision petitions i.e. Civil Revisions No. 7600 of 2015, filed by Sudesh Kumar, Civil Revision No. 7612 of 2015, filed by Sunder Lal and Civil Revision No. 7620 of 2015, filed by Ram Kumar. For the purpose of adjudication, facts are being taken from Civil Revision No. 7600 of 2015.

Present petition is challenge to the order dated 4.11.2015, passed by learned Civil Judge (Junior Division), Gurgaon, whereby application under Order 1 Rule 10 CPC, filed by the applicants/respondents, namely Ramji Lal, Bhoop Singh, Balbir, Dharamraj and Mangtu, was accepted for their impleadment as party to the suit.

Learned counsel for the petitioner submitted that main suit was filed by the petitioner for relief of permanent injunction against Municipal Corporation, Gurgaon so as to protect the possession as joint owner in respect of plot in dispute which was purchased by the petitioner vide sale deed dated 11.9.2006. After purchase of the plot, petitioner constructed a boundary wall and as plaintiff was apprehending threats against his possession from the defendant i.e. Municipal Corporation, Gurgaon, suit for permanent injunction was filed.

When the case was fixed for final arguments, an application under Order 1 Rule 10 CPC was filed, though the applicant/respondents are not the necessary parties. But the Court below accepted the application, thereby complicated the matter unnecessarily and the said order is liable to be set aside.

Learned counsel for the respondents submitted that there is no illegality in the order under challenge because in the present case, Municipal Corporation, Gurgaon was in connivance with the petitioner and was not protecting the interest of general public in respect of public property. Otherwise also, the Court is custodian of the public property and applicants, who have sought intervention by filing an application under Order 1 Rule 10 CPC. The same has been allowed as per law by the Court below and the present petition is liable to be dismissed.

Having considered the submissions made by learned counsel for the parties and considering the facts in its entirety, this court is of the considered view that undisputedly, petitioner as plaintiff had filed a suit for permanent injunction against Municipal Corporation, Gurgaon. Both the parties have led their respective evidence and the case was fixed for final arguments and at that time, applicant/respondents moved an application for their impleadment in the suit by filing an application under order 1 Rule 10 CPC. It is a settled proposition of law that plaintiff is master of his suit and especially in a simple suit for permanent injunction, applicants cannot be considered to be proper or necessary parties to the instant suit. If, at all, applicants are interested for seeking any relief regarding suit

property qua present petitioner, they can file a separate civil suit because the decree passed in the present civil suit would not be binding upon the applicants and there is no necessity for impleadments of applicants as party in the case. Such a view was taken by this Court in ***Shri Gurudwara Sahib Sidhsar and Another v. Shromani Gurudwara Prabandhak Committee and Others* 2012 AIR CC 2326.**

Similar matter was before the Hon'ble Apex Court in ***Vidur Impex and Traders pvt. Ltd. v. Tosh Apartments Pvt. Ltd.* 2012(4) RCR (Civil) 308**, wherein it was observed as under:

"36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

- 1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.*
- 2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.*
- 3. A proper party is a person whose presence would*

enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. *If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.*
5. *In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.*
6. *However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment."*

in view of above, the case of applicant/respondents does not fall for qualification to be impleaded as party to the present litigation. More so, application for impleadment was filed at highly belated stage and the case was fixed for final arguments. In the application for their impleadment, applicants did not offer any tangible

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explanation as to why the application for impleadment was filed at the
fag end of the litigation. However, the Court below has not considered
these legal aspects while deciding the application under order 1 Rule 10
CPC and while passing the impugned order dated 4.11.2015.

In view of above, present petition is accepted and the
impugned order stands set aside.

**(Shekher Dhawan)
Judge**

March 30, 2016
"DK"