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

Civil Revision No.8511 of 2016

Date of Decision: 16.12.2016

MAKHAN @ LAXMAN

.....Petitioner

Vs

RISALO DEVI AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rose Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed order dated 17.11.2016 (Annexure P-8) passed by Civil Judge (Jr. Divn.) Hisar, whereby prayer made in the application under Order 1 Rule 10 CPC was declined.

[2]. In a suit for declaration filed by the plaintiff, claim has been made to the ownership to the extent of 1/4th share of the suit property. A decree for separate possession by metes and bounds has also been claimed besides claiming restraint *qua* alienation of the suit property. In para No.8 of the plaint, it was pleaded that Babu Ram died on 02.12.2003 and there was an oral family settlement between the parties to the suit in the 2nd

week of December 2003, wherein 1/4th share in the suit property was given to the plaintiff and remaining 1/4th share was to be apportioned amongst the defendants.

[3]. In the written statement filed by second wife of Babu Ram and children from second wife, preliminary objection No.6 was taken in respect of mis-joinder and non-joinder of the necessary parties. Factum of family settlement incorporated in para no.8 of the plaint was denied in para no.8 of the written statement, which was filed on 08.12.2012.

[4]. In the month of September 2016, the application under Order 1 Rule 10 CPC was filed by the plaintiff, seeking to implead Kavita as party defendant in the suit. The suit is already at the stage of rebuttal and arguments. Apparently, the application came to be filed just to overcome technical objection with regard to the mis-joinder and non-joinder of necessary parties taken by the defendants.

[5]. As per the pleadings in the plaint, Kavita was not the party to the alleged oral family settlement which took place between the parties to the suit in the 2nd week of December 2003. Nothing was claimed against Kavita in the suit. The addition of Kavita as party-defendant would give rise to *de novo* trial and the same will prejudice the rights of the defendants and

would also give rise to multiple proceedings, particularly when both the parties have already completed their evidence and the case is already fixed for rebuttal and arguments. Even otherwise, nothing has been claimed against Kavita in the plaint.

[6]. Filing of application after four years of filing of the written statement appears to be an act to overcome the lacuna as claimed by the defendants.

[7]. In view of above, there is no error of jurisdiction committed by the trial Court, nor the order is suffered with any perversity. This revision petition is accordingly dismissed.

December 16, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No