

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

-.-

CR 8686 of 2016
Date of decision: 22.12.2016

Rajwinder Kaur and others *Petitioners*

Versus

Amanpreet Kaur and another *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioners

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Rekha Mittal, J.

The present petition directs challenge against order dated 03.12.2016 (Annexure P6) passed by the Civil Judge (Junior Division), Kapurthala whereby application filed by the petitioners under Order 1 Rule 10 of the Code of Civil Procedure (in short, CPC) has been dismissed.

Counsel for the petitioners has submitted that Amanpreet Kaur widow of Sukhjinder Singh has filed a suit for separate possession by way of partition to the extent of half share in the properties, detailed in head note of the plaint with a consequential relief of permanent injunction wherein Joginder Kaur, their mother has been impleaded as a defendant. Joginder Kaur filed the written statement raising preliminary objection that the suit is bad for misjoinder and nonjoinder of necessary parties. The plaintiff knowingly and willfully did not implead legal heirs of Shri Prem Singh son of Kekar Singh, original owner of the property in question. She pleaded

that the property in question was not the ownership or in possession of Sukhjinder Singh to the extent of half share as alleged. Shri Prem Singh son of Kekar Singh was the original owner of the property in question i.e. properties No. (a) and (b) and after his death, the properties in question have been inherited by the defendant being his widow and Rajwinder Kaur, Hardip Kaur and Kulwant Kaur as his daughters, Sukhjinder Singh (since deceased) husband of the plaintiff and Daya Singh son of Prem Singh to the extent of $1/6^{\text{th}}$ share each. It is argued with vehemence that as there is a serious dispute between the plaintiff and defendant with regard to ownership of the properties in dispute which are claimed to be previously owned by Shri Prem Singh, father of the petitioners, the petitioners being interested in the *lis* are entitled to be impleaded as defendants in order to protect their interests in the suit properties.

I have heard counsel for the petitioners and perused the paper book particularly the order impugned.

Perusal of the pleadings of the parties before the trial Court would make it evident that the respondent/plaintiff is claiming half share in the suit properties on the plea that Sukhjinder Singh was owner thereof and on his death, the plaintiff and defendant being Class I heirs of Sukhjinder Singh are entitled to half share each in the same. On the contrary, plea of the defendant (pro forma respondent) is that the property detailed in sub para (a) and (b) of the plaint was previously owned by Shri Prem Singh and has been inherited by his six Class I heirs to the extent of $1/6^{\text{th}}$ share each. There is no dispute between the parties with regard to relationship of the petitioners with Sukhjinder Singh and Shri Prem Singh. As there is a

serious controversy in the lis with regard to ownership of the suit properties, the petitioners being Class I heirs of deceased Prem Singh are entitled to be heard in the matter to protect their interests in the properties subject matter of the *lis*.

The trial Court has dismissed the application primarily on three counts; the case had already reached the stage of arguments; the plaintiff being the *dominus litus* in her wisdom had not opted to implead the applicants as a party despite the said fact having been brought to her notice by way of written statement of the defendant and the application has been filed to nullify the adverse affect of order dated 14.05.2014 passed by the High Court whereby the defendant has been debarred from cross examining the witnesses of the plaintiff already examined till then.

The Court has not adverted to the ingredients of Order 1 Rule 10 (2) CPC provides for addition or deletion of parties, by appreciating if presence of the petitioners is proper much less necessary for complete and effective adjudication of the matter in controversy. No doubt, power to be exercised by the Court under Order 1 Rule 10 CPC is discretionary in nature and the Court may refuse to exercise its discretion if an application is made at a belated stage. On a pointed query raised by the Court, counsel for the petitioners on instructions, has informed that in case the petitioners are permitted to be impleaded as defendants, they would not claim filing of the written statement, cross examination of the witness(es) already examined by the plaintiff/defendant, therefore, they would join proceedings from the present stage but may be given liberty to produce document(s), if any, pertaining to other litigation pending between the parties regarding

land/property.

Taking into consideration the controversy involved in the suit, relationship of the petitioners with Sukhjinder Singh and Prem Singh coupled with stand of the petitioners that in case they are impleaded as defendants, it would not amount to reopening the case or a *de novo* trial, the petition is allowed subject, however, to the following conditions:-

1. The petitioners shall not be entitled to file written statement;
2. They shall not be entitled to seek cross examination of the witness(es) already examined by the plaintiff/defendant;
3. They are allowed to join the proceedings from the stage at which the same are pending;
4. They shall be entitled to adduce documentary evidence pertaining to other litigation between the parties.
5. However, it is left open to be decided by the trial Court qua relevance, admissibility of the document(s) and whether the same are to be marked or exhibited.

Before parting with the order, it is clarified that the instant petition has been disposed of without notice to the respondent in order to avoid inconvenience and incurring expenditure by her. However, if the respondent has any grievance to express, she shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

22.12.2016
mohan bimbra

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