

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:10.10.2017

C.R.No. 1250 of 2011(O&M)

Manjit Kaur and others

---Petitioners

vs.

Saranpal Singh @ Kala and others

---Respondents

C.R.No. 1260 of 2011(O&M)

Manjit Kaur and others

---Petitioners

vs.

Saranpal Singh @ Kala and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. H.S.Brar, Advocate
for the petitioners

Mr. O.P.Sharma, Advocate
for respondent No. 1

Mr. Sarju Puri, Advocate
for respondent Nos. 2 and 5

Rekha Mittal, J.

CM No. 21424-CII of 2017 in C.R.No. 1250 of 2011

Notice of the application to counsel for the non-applicants-

petitioners.

Heard.

Allowed as prayed for. Annexures R-2/1 to R-2/3 are taken on record subject to just exceptions.

CR Nos. 1250 and 1260 of 2011(O&M)

This order will dispose of Civil Revision Nos. 1250 and 1260 of 2011 as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from Civil Revision No. 1250 of 2011.

Counsel for the petitioners has submitted that the petitioners and respondent No. 1 claimed their right to property of Bhagat Singh (since deceased) on the basis of registered Will dated 31.8.1971 and 22.10.1978 respectively. Bhagat Singh died on 27.12.1979 and his wife Kartar Kaur, mother of the petitioners and grandmother of respondent No. 1 died on 14.11.1986. Respondent No. 1 is claiming to be sole owner of property of Bhagat Singh whereas the petitioners have claimed that they are the owners of equal shares to the extent of 1/5th share each.

Saranpal Singh @ Kala respondent No. 1 as well as the petitioners filed separate suits for declaration against each other. Both the suits were decided by the Additional Civil Judge (Senior Division), Nawanshehar on 2.6.2008. The suit filed by the petitioners was decreed but suit filed by respondent No. 1 was dismissed. Respondent No. 1 filed two separate appeals against the judgments and decrees of the trial court on 24.7.2008. During pendency of the appeals, respondent Nos. 2 to 8 filed an application under Order 1 Rule 10 of the Code of Civil Procedure (in short

“the Code”) for impleading them as parties. After replies filed by the petitioners as well as respondent No. 1, the Court in Appeal (Additional District Judge, Nawanshehar) allowed the application filed by respondent Nos. 2 to 8 by a non-speaking and cryptic order dated 30.11.2010, impugned by the petitioners. It is argued with vehemence that the impugned order is liable to be set aside as the same has been passed without application of mind and assigning any reason. It is further argued that the Court in Appeal is required to be very slow in allowing an application for addition of party which would result in *de novo* trial and unsettle the questions already decided by the trial court. For this purpose, he has relied upon judgment of this Court **Ram Pal vs. Akki Devi alias Savitari Devi and others 2006(3) RCR (Civil) 264.**

Another submission made by counsel is that the plaintiff is *dominus litis* of the proceedings and he cannot be compelled to contest against a party against which he does not wish to contest. Further submitted that as the petitioners did not claim any relief against respondent Nos. 2 to 8/applicants, they cannot be allowed to be impleaded as a party at the belated stage when the matter was pending in appeal. In this context, reference has been made to another judgment of this Court **Harwant Singh vs. Smt. Guro 1999(2) RCR (Civil) 419.**

Counsel representing respondent Nos. 2 and 5 has submitted that Bhagat Singh deceased left behind Smt. Kartar Kaur widow and six daughters namely Manjit Kaur, Sukhwinder Kaur @ Mohinder Kaur, Manjinder Kaur, Jasbir Kaur, Jaswinder Kaur and Gurmeet Kaur as has been depicted in the pedigree table appended with the application under Order 1

Rule 10 of the Code. It is further argued that respondent Nos. 2 to 8/applicants are the successors-in-interest of Gurmeet Kaur (since deceased) one of the daughters left behind by Bhagat Singh. It is argued with vehemence that as in the suits filed by the petitioners and respondent No. 1 entire controversy revolves around inheritance to the estate left behind by deceased Bhagat Singh, respondents/applicants being the class-I heirs of deceased Bhagat Singh (successors-in-interest of Gurmeet Kaur) are necessary party for complete and effective adjudication of the matter in controversy. It is further argued that earlier Manjit Kaur, one of the petitioners filed civil suit No. 463/08 instituted on 16.7.2004 wherein petitioners No. 2 to 4, respondent No.1 and Gurmeet Kaur were impleaded as defendants and in para 1 of the plaint, pedigree table showing relationship of the parties was reproduced, sufficient to establish plea of the respondents/applicants that Gurmeet Kaur predecessor-in-interest of the applicants was one of the daughters left behind by Bhagat Singh. Averments raised in the plaint of the aforesaid suit (civil suit No. 463/08) are supported by an affidavit of Manjit Kaur wherein the same pedigree table reflected in para 1 of the plaint has been reiterated admitting that Gurmeet Kaur was one of the class-I heirs of deceased Bhagat Singh. According to counsel, the petitioners and respondent No. 1, stealthily sought adjudication qua rights in the property left behind by deceased Bhagat Singh without impleading respondents/applicants as a party when otherwise their presence is necessary for complete and effective adjudication of rights of class I heirs of Bhagat Singh.

I have heard counsel for the parties, perused the paper book and

various annexures.

Counsel for the petitioners has not made any submissions to say something with regard to document Annexure R-2/1 which is a part of court records pertaining to civil suit instituted by Manjit Kaur in July 2004 wherein Manjit Kaur had categorically stated that Bhagat Singh deceased left behind Manjit Kaur, Sukhwinder Kaur @ Mohinder Kaur, Manjinder Kaur, Jasbir Kaur, Jaswinder Kaur and Gurmeet Kaur as his daughters. Indisputably, two suits, one filed by the petitioners and the other by respondent No. 1 pertain to inheritance to the estate left behind by deceased Bhagat Singh.

Order 1 Rule 10(2) of the Code deals with, Court may strike out or add parties. A relevant extract therefrom reads as follows:-

“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.”

As respondent Nos. 2 to 8/applicants have claimed themselves to be successors-in-interest of Ms. Gurmeet Kaur (since deceased) one of the daughters of deceased Bhagat Singh in regard to whose estate contest has been raised by the petitioners and respondent No. 1 by filing separate

suits, it is difficult to accept contention of the petitioners that respondent Nos. 2 to 8 are not necessary party to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit. In this view of the matter, no error can be found in the order impugned permitting the applicants to be impleaded as a party on the array of defendants.

To be fair to the petitioners, counsel has relied upon judgment of this Court to substantiate his plea for setting aside the impugned order. No doubt, in **Ram Pal's case (supra)**, this Court has held that the Appellate Court should be slow enough in impleading a party at the appellate stage as after impleading a person as a party the trial will become *de novo*. There is no such finding recorded by the Court that a person whose presence is necessary for achieving the objects envisaged in Rule 10(2) of Order 1 is not to be impleaded as a party merely because the application has been filed at the appellate stage. Even otherwise, this Court has set aside the order passed by the Court in Appeal impleading Akki Devi as a party in the peculiar facts and circumstances discussed in para 5 of the judgment.

There cannot be any dispute about the settled position in law that the plaintiff is *dominus litis* of the proceedings and he cannot be compelled to contest against a party against whom he does not wish to contest but at the same time, the plaintiff cannot avoid impleading of persons whose presence is necessary for complete, proper and effective determination. In case the applicants are not permitted to be impleaded as a party, it may give rise to another litigation to be initiated at their instance claiming their right of inheritance to the estate of deceased Bhagat Singh.

In this view of the matter, the petitioners cannot derive any advantage to their contentions from the referred authorities.

In view of the discussion made hereinbefore, I do not find any patent error much less illegality in the impugned order warranting intervention in exercise of jurisdiction under Article 227 of the Constitution of India.

Dismissed. No order as to costs.

(Rekha Mittal)
Judge

10.10.2017
paramjit

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