

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

**CR No. 1167 of 2017
DECIDED ON: MARCH 20, 2017**

SHIV KUMAR

.....PETITIONER

VERSUS

SDO HARYANA STATE MINOR IRRIGATION DEPT & ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Parminder Singh, Advocate
 for the petitioner.

JASPAL SINGH, J

Challenge in this revision petition, preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of impugned order dated December 07, 2016 (Annexure P-4), passed by learned Civil Judge (Jr. Division), Karnal, whereby, an application moved by the respondents N. 3 to 5 under Order I Rule 10 of the Code of Civil Procedure (for short 'Code'); has been allowed.

While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioner that respondents No.3 to 5 are neither necessary nor proper parties, as no relief has been claimed against respondents No.3 to 5. Petitioner has preferred a simple suit for mandatory injunction against respondents No.1 and 2 seeking direction to them to construct a khal/water course at its actual/old place, which was carved out at the time of

consolidation, after taking demarcation from the revenue department and open the blockage of the water course from canal to its end with immediate effect with a consequential relief for permanent injunction thereby, restraining the defendants to construct a new water course in Killa Nos.2, 3 and 4 of rectangle No. 60 or in the land of the petitioner-plaintiff without demarcation of the water course/khal detailed in para 2 of the plaint; illegally or forcibly and further restraining the defendants from interfering into his peaceful possession over the suit land. As no relief has been claimed against respondents No.3 to 5 and the petitioner/plaintiff is *dominus litis*, allowing of an application moved by them under Order I Rule 10 of the Code as against the law and fact. Petitioner/plaintiff cannot be made to contest against a person against whom, he does not claim any relief and does not intend to contest. Since the relief has only been claimed against respondents No.1 and 2, respondents No.3 to 5 cannot be termed to be a necessary or proper party. Thus, the impugned order is not sustainable in the eyes of law and deserves to be set aside by way of acceptance of instant revision petition.

After bestowing due consideration to the afore-said submissions made by learned counsel for the petitioner and scrutinizing the impugned order, this Court comes to the conclusion that the same is without any legal or factual weight and the impugned order being absolutely in consonance with the proposition of law and facts does not call for any interference by this Court.

Undisputably, petitioner-plaintiff has sought restoration of water course, which is allegedly passes through the land comprise in Killa Nos. 2, 3, 4 of rectangle No. 60, which not only belongs to the petitioner-plaintiff but also belong to respondents No.3 to 5. Respondents No.3 to 5 are also a co-sharer in

the property referred to above. In case the water course is allowed to pass through the lands/properties owned and possessed by respondents No.3 to 5 then they are likely to be greatly prejudiced.

Moreover, if the petitioner-plaintiff intends to get the water course restored, he should approach the Canal and Drainage Department by moving an appropriate application for obtaining the orders for the restoration of khal/water course, if it has been closed or blocked by some persons. All the co-sharers and land owners in whose land the restoration of water course has been sought, can be termed to be necessary parties. It is well settled proposition of law that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. In the instant case respondents No.3 to 5 being a co-sharers in the property in suit are not only the proper parties but also the necessary parties. In their absence the passing of any order/judgment is likely to cause prejudice to their rites.

Moreover, the court has discretion to either allow or reject the application of a person claiming to be a party depending upon the facts and circumstances and no person has a right to resist that he could be impleaded as a party merely because he is a proper party. In the case in hand, respondents No.3 to 5 are not only proper parties but also necessary parties, as has also been discussed above. They are likely to be prejudiced by an order/judgment passed in the suit. Moreover, by allowing the application under Order I Rule 10 of the Code preferred by respondents No.3 to 5 is not going to cause any detriment or prejudice to the petitioner/plaintiff. The impugned order is absolutely in consonance with the provisions contained in Order I Rule 10 of the Code and as

such it does not call for any interference by this Court.

In the light of what has been discussed above, this Court does not find any merit in the instant revision. As such, it stands dismissed.

No order as to costs.

MARCH 20, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*