

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

CR No.1223 of 2017(O&M)

Date of decision: 30.11.2017

Gurmeet Kaur @ Meet Kaur and othersPetitioners

VERSUS

Sucha Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Parvinder Singh, Advocate for the petitioners.

Mr. Pritam Saini, Advocate for respondent No.1.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 03.12.2016 (Annexure P-8) whereby application filed by the petitioners under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') for impleadment as a party has been dismissed.

Counsel for the petitioners has submitted that Sucha Singh – respondent/plaintiff is the real brother of Mohinder Singh and the petitioners are the wife and children of Mohinder Singh. Sucha Singh has filed a suit for possession as owner by way of specific performance of agreement to sell dated 14.06.2005 in respect of land measuring 2 kanals detailed in headnote of the plaint. In the said suit, the petitioners were impleaded as performa defendants No.2 to 6. In para 3 of the plaint, it has been averred that prior to the said decision in the year 2009, defendant had left his house/village intentionally for some unknown place by telling to his family member and since the date of sanction of mutation on 19.07.2012, performa defendants are not telling to plaintiff regarding his

place of working and residence and they are lingering on the matter for execution of the sale deed in favour of the plaintiff by saying that they will bring defendant No.1 before the Sub Registration Majri by giving prior notice to the plaintiff for execution of sale deed. It is further argued that a DDR No.1529-5A dated 09.05.2009 (Annexure P-3) was lodged with Police Station Kurali with regard to Mohinder Singh having gone missing. It is argued with vehemence that in view of missing report lodged by Ms. Gurmeet Kaur wife of Mohinder Singh way back in May 2009 coupled with the averments raised in para 3 of the plaint it is apparent that Mohinder Singh is missing since 2009, therefore, he is deemed to have died even though there is no formal declaration made by a Court of law that Mohinder Singh has met a civil death. It is further argued that in the face of aforesaid scenario, petitioners being the widow and children of deceased Mohinder Singh are a necessary party to contest the suit filed by Sucha Singh. In support of his contention, he has referred to judgments of this Court **Gurdeep Kaur Vs. Vinod Kumar Lamba , 1994(2) RRR 673** and **Kulwinder Kaur Vs. Raghbir Singh, 1998 (4) RCR (Civil) 381.**

Counsel representing the contesting respondent, on the contrary, would urge that as the petitioners were impleaded as a party on the array of defendants but later the suit was dismissed as withdrawn against defendants No.2 to 6 (petitioners herein) in view of the statement made by counsel for the respondent/plaintiff dated 29.03.2016 (Annexure P-4) and the Court permitted the plaintiff to withdraw the suit against defendants No.2 to 6, till the time, order passed by the trial Court allowing the respondent to withdraw the suit against defendants No.2 to 6 is set aside in appropriate proceedings, the petitioners cannot assert their right to be impleaded as parties by relying upon judgments of this Court. In

addition, it is argued that though the petitioners were impleaded as performa defendants but they filed the written statement on merits.

I have heard counsel for the parties, perused the paper-book and the judgments cited at bar.

Counsel for the respondent/plaintiff, real brother of Mohinder Singh has not disputed that Mohinder Singh has not been seen or heard of since 2009. Gurmeet Kaur wife of Mohinder Singh lodged DDR in the year 2009 with regard to Mohinder Singh having gone missing. This Court in **Kulwinder Kaur's case** (supra) by relying upon the earlier judgment of this Court in **Gurdeep Kaur's case** (supra) has allowed plea of the petitioners to be impleaded as party to the civil suit in similar set of circumstances. In that case, respondent filed a suit for specific performance against Dr. Jagir Singh. The report was received that whereabouts of Dr. Jagir Singh were not known. A police report dated 08.07.1996 in this regard had been made. The petitioners filed an application under Order 1 Rule 10 CPC to be impleaded as parties to the suit. The trial Court by relying upon Section 108 of the Indian Evidence Act, 1872 held that since 7 years have not elapsed, it cannot be termed that Dr. Jagir Singh is a dead person. Since such a presumption could not be drawn, petitioners were not taken to be necessary party. Their application was dismissed. This Court while expressing its concurrence with the view taken in **Gurdeep Kaur's case** (supra) allowed the petition and consequently the wife and children of Dr. Jagir Singh were allowed to be impleaded as parties in the suit. The controversy raised in the present petition is squarely covered by the judgment in **Kulwinder Kaur's case** (supra) to accept plea of the petitioners that they are entitled to be impleaded as parties and contest the suit filed by Sucha Sijngh – respondent/plaintiff.

Counsel for the respondent/plaintiff has raised an issue with regard to withdrawal of the suit against performa defendants (petitioners herein) vide statement dated 29.03.2016 made by counsel for the respondent before the trial Court. A relevant extract from the statement reads as follows:-

“Stated that plaintiff is claiming nothing from the performa defendants in the agreement and now plaintiff does not want to proceed with this suit against performa defendants No.2 to 6 and withdraw the same.”

The trial Court, on the basis of aforesaid statement allowed the respondent/plaintiff to withdraw the suit against performa defendants. By way of instant application, the petitioners have not prayed for being impleaded as performa defendants rather they are claiming to be impleaded as contesting defendants on the premise that whereabouts of Mohinder Singh, alleged executant of the agreement of sale are not known since 2009. That being so, withdrawal of the suit against performa defendants does not create a bar against the petitioners from asserting their right to be impleaded as contesting defendants. This apart, there is nothing on record suggestive of the fact that at the time of passing of order with regard to withdrawal of the suit against performa defendants, the trial Court adverted to the question of entitlement of the petitioners to be impleaded as contesting parties on the premise of Mohinder Singh had gone missing since 2009. In this view of the matter, I find myself unable to subscribe to the contention of respondent/plaintiff that the earlier order of withdrawal can debar the petitioners to press their claim for impleadment, on the basis of ratio laid down in **Kulwinder Kaur's case** (supra).

No other point has been raised.

For the foregoing reasons, the petition is allowed.

Application filed by the petitioners for being impleaded as parties on the array of defendants is allowed. The trial Court is directed to proceed with the suit, after necessary impleadment of the petitioners as defendants, in accordance with law. No order as to costs.

NOVEMBER 30, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no