

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

**CR No. 2439 of 2017
DECIDED ON: APRIL 05, 2017**

VISHAL MANGAL

....PETITIONER

VERSUS

HARYANA WAKF BOARD & ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

JASPAL SINGH, J

Challenge in this revision petition preferred under Article 227 of the Constitution of India is to the order dated July 06, 2015 (Annexure P-7) passed by learned Civil Judge (Jr. Division), Ambala, whereby, an application under Order I Rule 10 of the Code of Civil Procedure (for short 'Code') filed by the petitioner for impleading him as a party in the suit; has been dismissed.

For proper appreciation and adjudication of the instant revision, it would be desirable to refer the facts. That the respondent No.1-Haryana Wakf Board (for short 'Board') filed a suit for possession of property measuring 34.44 square yards bearing MC No. 4043, situated at Abkari Chowk, Ambala Cantt, as well as suit for permanent injunction restraining the defendant/respondent No.2

from raising any construction over the suit property or changing its nature as well as alienate the same and creating any charge over it by sale, mortgage, lease etc. As per the averments made in the plaint the suit property is a part of Wakf/Mosque property and its ownership vest in Almighty God. The management and control of the afore-said property vest with a Board under Wakf Act, 1954/1995. The disputed property was leased out to defendant/respondent No.2 vide lease order No.24/lease u/1780/05/8701, dated March 04, 2006. The defendant/respondent No.2 has illegally raised construction over the land in dispute without the permission of the Board and has violated the terms and conditions of the lease deed. The defendant/respondent No.2 was asked time and again to execute a fresh lease deed with the Board but defendant/respondent No.2 has failed to do so. Otherwise also, he has arrears of rent since December 02, 2006, on account of the afore-said reasons the lease in favour of defendant/respondent No.2 was cancelled vide notice dated June 13, 2011 and was asked to hand over the possession to the Board. The said suit is being resisted by defendant/respondent No.2 by filing written statement.

While assailing the impugned order it has been argued by learned counsel for the petitioner that during the pendency of afore-said suit petitioner moved an application under Order I Rule 10 of the Code read with Section 151 of the Code for impleading him as a party in the present suit on the ground that he along-with his family members are residing in the portion of the house which is situated over the suit land. He further averred in the application that as their right in the suit property is involved and to avoid any complication and multiplicity of the litigations, he is necessary and proper party to be impleaded

as defendant in the present suit but the said application was dismissed by learned trial Court vide impugned order dated July 06, 2015. Learned counsel for the petitioner further contended that in fact the impugned order is absolutely against the settled principles of law and learned trial Court has failed to appreciate that since the petitioner is living with his family members in a part of disputed property, he is not only party but necessary party also. Moreover, an application filed by the petitioner under Order I Rule 10 of the Code was dismissed simply on the ground that petitioner could not place on record any document in support of his claim but no such opportunity was afforded to him by learned trial Court before deciding the afore-said application. Otherwise also, once there is clear cut admission of the petitioner that he is residing with his family member in the part of disputed property then nothing remain to prove on record to show his locus-standi, as well as to establish that petitioner was a necessary and proper party to be impleaded in the suit.

Another ground which weighed in the mind of learned trial Court while dismissing the application is that defendant/respondent No.2 has stated in its reply that petitioner was merely licensee in the suit property of defendant/respondent No.2 and this fact has not been reverted by the petitioner. On this ground only the application has been dismissed. While filing the instant revision, petitioner has placed on record voter list, identity card, electricity bill, telephone bill as well as copy of ration card, which pertain to House No. 4043 i.e. the disputed property. Since the right and interest of the petitioner are involved in the suit, he being a necessary and proper party deserves to be impleaded in the suit, otherwise he is likely to be greatly prejudiced.

This Court has given an anxious thought to the afore-said

submissions made by learned counsel for the petitioner but does not find any legal and factual weight therein.

The property in question was undoubtedly leased out to defendant/respondent No.2 and a lease deed dated March 04, 2006 was executed in favour of defendant/respondent No.2 but subsequent thereto, defendant/respondent No.2 committed violation of terms and conditions of the lease order dated March 04, 2006. On account of which, Board was constrained to file a suit for possession after cancellation of the lease order vide its notice dated June 13, 2011. The petitioner is none else but a brother of defendant/respondent No.2 and the application appears to have been moved at the instance of defendant/respondent No.2. Petitioner cannot be said to be in possession of the suit property in his own right. An admission of defendant/respondent No.2 that the petitioner also in possession of some part of the suit property and further is averment that he is lessee under him and he has already initiated the proceedings against ousting him, appears to have been taken just to circumvent the controversy and complicate the matter. Otherwise also, petitioner has no right in the disputed property, just being the brother of lessee. After the cancellation of lease order vide notice dated June 13, 2011, possession of defendant/respondent No.2 as well as that of petitioner is nothing but as an unauthorised occupants. The petitioner has no locus-standi to claim any right or interest in the suit property

Thus, this Court is of the considered view that no interference of this Court is justified in the impugned order, which otherwise is in consonance with the evidence available on file as well as settled cannons of law.

In the light of what has been discussed above, this Court does not

find any merit in the instant petition. As such, it stands dismissed.

No order as to costs.

APRIL 05, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*