

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 122

Civil Revision No.2926 of 2017 (O & M)
Date of Decision: April 26, 2017

Surinder Kaur

..... PETITIONER

VERSUS

Mohinder Kaur & another

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Harsh Bunger, Advocate, for the petitioner.

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Jaspal Singh, J (Oral)

1. Through the instant revision petition, preferred under Article 227 of the Constitution of India, petitioner has sought quashing/ setting aside of order dated March 21, 2017 (Annexure P-5) passed by the Civil Judge (Junior Division), Jalandhar, whereby an application filed by the petitioner – applicant under Order 1 Rule 10 CPC for impleading her as defendant No.2 in a suit for possession, captioned as ‘Mohinder Kaur vs. Dharam Singh’ has been declined.

2. Contention of learned counsel for the petitioner is that previously respondent No.1 – Mohinder Kaur filed a suit for possession against defendant Dharam Singh (respondent No.2 herein) on the basis of sale deed dated May 11, 1999 and on coming to know about the aforesaid sale deed, Dharam Singh filed another suit for declaration challenging sale

deed dated May 11, 1999 titled 'Dharam Singh vs. Mohinder Kaur & others'. However, both the suits were transferred to one court for disposal to avoid any conflicting judgments. Infact, applicant Surinder Kaur is wife of Dharam Singh-defendant, who is serving in the Indian Army and she has been appearing on his behalf as his attorney but was not aware that she being a co-sharer in the property has a separate identity. As such, factum of her being co-owner in the disputed property could not be disclosed by her to her counsel. As such, the said fact also could not be reflected in the written statement. The fact that Surinder Kaur is a co-sharer in the property in suit is fully reflected in jamabandi Ex.DX. Thus, applicant is not only proper but also a necessary party as her legal rights are also likely to be prejudiced, in case, she is not allowed to be impleaded as party to the suit. Thus, dismissal of the application moved by her under Order 1 Rule 10 CPC vide impugned order dated March 21, 2017 is illegal and as such, the impugned order being not sustainable in the eyes of law, is liable to be set aside.

3. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner but does not find any legal and factual weight therein.

4. The respondent – plaintiff has filed a suit for possession of the specific area described in the head note of the plaint with consequential relief of permanent injunction, on the basis of sale deed dated May 11, 1999 executed by Channu Ram son of Maghu Ram son of Miya, in her favour, and further for permanent injunction restraining respondent No.2 - defendant Dharam Singh from demolishing, dismantling, damaging and changing the nature of suit property in any manner. The mere fact that sale deed dated May 11, 1999 executed by Channu Ram in favour of respondent – plaintiff

Moreover, the suit was filed by respondent – plaintiff in the month of April 2011 and it remained pending for a period of approximately six years when an application under Order 1 Rule 10 PC was moved by Surinder Kaur wife of Dharam Singh. She has been continuously appearing and contesting the suit on behalf of her husband being his attorney. The case was at its penultimate when the application in question was filed. There is nothing on the record to suggest as to why such an application was not moved by her earlier when she was fully aware of the litigation and had been appearing continuously for the last six years. Thus, moving an application at the fag end of the case does not appear to be bona fide.

5. Here, it would also be pertinent to mention that perusal of Ex.DX (jamabandi for the year 2008-09) depicts that the suit property was earlier comprised in Khasra Numbers. The said property has now been divided into different plots including this plot which has been purchased by the respondent – plaintiff from Channu Ram son of Maghu Ram. There is only dispute in the instant suit with regard to the possession over the plot in question. Moreover, she has only claimed herself to be one of the co-owners of the property reflected in jamabandi. Thus, it can safely be concluded that petitioner – Surinder Kaur was aware of the litigation since the date of its filing, but despite due diligence, she did not opt to file any such application earlier. The application was moved at the fag end when the suit was going to be decided. No doubt, an application under Order 1 Rule 10 CPC can be filed at any stage, even at the appellate stage, yet the bona fide or malafide on the part of the applicant is to be seen and taken into consideration. It is not the case where the applicant was unaware of the litigation. Moreover, application also appears to have been filed at the final stage, just to delay the disposal of the suit. The impugned order also does not suffer from any

infirmity or illegality. Rather, the same is absolutely in consonance with the legal proposition.

6. In the light of what has been discussed above, this Court does not find any merit in the instant petition and the same is dismissed.

April 26, 2017
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(Jaspal Singh)
Judge

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>