

Civil Revision No.3263 of 2017 (O&M)

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

Sr. No.124

**Civil Revision No.3263 of 2017 (O&M)
DECIDED ON: May 08, 2017**

VIJAY KUMAR

..PETITIONER

VERSUS

MUNICIPAL COMMITTEE, DHARIWAL AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rajwant Singh Chahal, Advocate,
for the petitioner.

JASPAL SINGH, J.

Through the instant revision petition preferred under Article 227 of the Constitution of India, the petitioner has sought the setting aside of impugned order dated April 25, 2017 passed by the learned Additional Civil Judge (Sr. Divn.) Gurdaspur whereby an application moved by respondent Nos.2 to 4 under Order 1 Rule 10 CPC for impleading them as defendants/respondents has been allowed.

2. Challenging the impugned order dated April 25, 2017, it has

been argued with vehemence by learned counsel for the petitioner that the same is absolutely against the settled canons of law. The petitioner had earlier filed a suit for mandatory injunction against Himanshu Kanotra-respondent No.3 for his ejectment from the shop bearing No.B-38, which is pending disposal in the Civil Court at Gurdaspur.

3. Another suit for ejectment was filed by the petitioner against Manoj Kumar-respondent No.2 before the Rent Controller, Gurdaspur which has since been allowed. Many other civil and criminal cases are also pending besides the departmental complaints between the parties to the instant petition. Now the Municipal Committee, Dhariwal has joined hands with respondent No.2 to 4 and with a view to cause harm to the petitioner. The Municipal Committee, Dhariwal has procured the applications from the aforesaid persons for the allotment of the shop in dispute in their favour. They are also threatening to interfere into peaceful possession of the petitioner over the shop in dispute as well as to re-allot the disputed shop to someone else.

4. On account of the malafide acts and evil design of the respondents No.2 to 4, petitioner was constrained to file a suit for permanent injunction restraining the respondent No.1 from interfering in any manner in the allotment of shops bearing No.A5, B37 and B38, located in Langah Market, Dhariwal, which was allotted to him by respondent No.1 through draw of lots on October 12, 2011 and also restraining him from interfering in his actual, peaceful physical possession over the shops bearing No.A5, B37 and further restraining the respondent No.1 from cancelling the allotment and making alienation or re-allotment of the above said shops to

anybody else.

5. It has further been urged by the learned counsel for the petitioner that during the pendency of the civil suit, respondents No.2 to 4 manipulated and created certain documents in connivance with Municipal Committee, Dhariwal and thereafter moved an application under Order 1 Rule 10 CPC for impleading them as defendants/respondents, which has been wrongly and illegally allowed by the learned trial court. In fact, the impugned order dated April 25, 2017 is against the facts on record as well as the settled proposition of law. It is well settled that plaintiff in a civil suit is dominus litus and he cannot be compelled or forced to contest the case against the person against whom, he does not claim any relief. In the instant lis, the petitioner has only claimed relief of injunction against respondent No.1. Moreover, the shops in question are also allotted to respondent No.1 after due verification of record. Thus, respondents No.2 to 4 have also no right, title or concern with the disputed property. Thus, the impugned order is not sustainable in the eye of law and is liable to be set aside by way of acceptance of instant petition. Resultantly, an application under Order 1 Rule 10 CPC deserves to be dismissed.

6. This court has given a thoughtful consideration to the aforesaid submissions made by learned counsel for the petitioner but finds the same to be devoid of any merits.

7. It is pretty settled that an application for impleadment under Order 1 Rule 10 CPC, the court would only decide whether the presence of applicant(s) before the court may be necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions

involved in the proceedings. But by such addition, it cannot be said that any of the merits of claim(s) in question are adjudicated upon. Moreover, the test for necessary party are that - (i) there must be a right to some relief against such party in respect of controversies involved in the proceedings or (ii) no effective decree can be passed in his absence. Such, an observation was made by the Hon'ble Apex Court in case "*Kasturi v. Iyyamperumal and others, (2005) 6 SCC 733*".

8. Adverting to the facts of the case in hand, respondents No.2 to 4 i.e. Manoj Kumar, Himanshu Kanotra and Tarlok Nath have moved an application for impleading them as defendants/respondents in the suit. Vijay Kumar-petitioner/plaintiff is none else but the brother of respondent No.2-Manoj Kumar and respondent No.4-Tarlok Nath and uncle of respondent No.3-Himanshu Kanotra.

9. Admittedly, one of the disputed shops/kiosks was earlier owned by Kanshi Ram son of Kirpa Ram, which the petitioner alleges to have purchased for a consideration of Rs.70,000/- from him. But at the same time, respondent No.1 also possess an affidavits of Kanshi Ram and Joginder Nath, which shows that Kanshi Ram has given a Kiosk to Manoj Kumar whereas, Joginder Nath has stated that shop be allotted to Himanshu Kanotra, his grandson. Not only this, even respondents No.2 to 4 have also produced before the trial court report of the Government submitted in pursuance to the complaint No.45/15/Gurdaspur against Surjit Singh, Clerk, Municipal Council, Dhariwal wherein it finds mentioned that shop No.B-38 was allotted in lieu of Kiosk of Kanshi Ram, Shop No.B-37 was allotted to Joginder Nath and Shop No.A-5 was allotted to Tarlok Nath. It further

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finds mention in the said report that allotment made to Vijay Kumar s/o Joginder Nath does not tally with the office record and the receipts have been issued in favour of Vijay Kumar due to some clerical mistake. Thus, this court is of the considered view that no effective decree can be passed even in the suit for injunction in the absence of respondents No.2 to 4 who have also claimed ownership possessory right and interest in the disputed shops.

10. No doubt, the petitioner/plaintiff is a dominus litus and the relief for injunction has been claimed by him only Municipal Committee but due to the passing of the judgment thereby granting injunction would certainly materially affect the rights of the respondents No.2 to 4. Their presence before the court is necessary in order to enable it effectively and completely adjudicate upon and settled the questions involved in the lis. Accordingly, this court is of the considered view that there is no infirmity, illegality or perversity in the impugned order dated April 25, 2017 and the same is absolutely in consonance with the settled proposition of law. It does not call for any interference by this court.

11. In the light of what has been discussed above, this court does not find any merit in the instant petition. As such, the same is dismissed, whereby the impugned order dated April 25, 2017 is upheld.

12. No order as to costs.

May 08, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**