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

Sr. No.115

**Civil Revision No.3879 of 2017
DECIDED ON: May 30, 2017**

PARTAP SINGH AND ANOTHER

..PETITIONERS

VERSUS

GRAM PANCHAYAT AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Jai Vir Yadav, Advocate,
for the petitioners.

JASPAL SINGH, J.

Aggrieved against the order dated January 31, 2017 (Annexure P-5) passed by the learned Civil Judge (Jr. Divn.) Jhajjar vide which an application under Order 1 Rule 10 CPC moved by the respondent No.1-Gram Panchayat has been allowed, the petitioners/plaintiffs have preferred the instant revision petition under Article 227 of the Constitution of India for its setting aside.

2. The contention of the learned counsel for the petitioners/plaintiffs is that petitioners/plaintiffs along with others filed a

suit for possession by way of partition in a representative capacity under Order 1 Rule 8 CPC and a separate application for permission to file the above mentioned suit in representative capacity has also been filed. The petitioners/plaintiffs have claimed in the suit that the parties originally impleaded are joint owners in possession of the land fully detailed and described in para No.3 of the plaint total land measuring 1122K 19M situated within the revenue estate of village Palra, Tehsil Bri, District Jhajjar. Mutation No.1349 of village Palra regarding the suit land has already been sanctioned in favour of Mushtarka Malkan and Deegar Haqdarani. Reference to Mutation No.1731 in this regard has also been made.

3. During the pendency of the aforesaid suit, the Gram Panchayat, Palra moved an application under Order 1 Rule 10 CPC without having any right, title or interest in the suit property but that has been wrongly and illegally allowed by the learned trial court vide order dated January 31, 2017. The learned trial court has committed a grave error and illegality by misreading and mis-interpreting the pleadings contained in the plaint while observing that it reflects the suit property which includes the land pertaining to hospital, school etc. and that the suit land is being used for common purposes by the whole village. These observations are totally perverse and result of misreading of the pleadings. Otherwise also, presence of Gram Panchayat, Palra is not necessary to adjudicate upon the subject matter in the suit effectively once for all. In fact, Gram Panchayat, Palra is neither owner nor in possession of the suit property and has got no concern whatsoever with it. Moreover, it is not the case of the Gram Panchayat that

the suit land has ever been acquired by it. Thus, Gram Panchayat/respondent No.1 is neither necessary nor proper party and impugned order is liable to be set aside.

4. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioners and appraisal of the impugned order, this court is of the considered view that the same do not carry any legal and factual weight.

5. As observed by the Hon'ble Apex Court in case "*Kasturi v. Iyyamperumal and others*, (2005) 6 SCC 733, 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 its absence.

6. Moreover, the main object of Order 1 Rule 10 CPC is to prevent or shorten the multiplicity of litigation. In case "*Ramesh Hirachand Kundanmal vs. Municipality Corporation of Greater Bombay and others*", 1992 (2) SCC 524, the Hon'ble Supreme Court observed as under:-

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he had relevant evidence to give on some of the questions involved that would only make him a necessary witness-and not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason

which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal rights. it is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.”

7. Adverting to the facts of the case in hand, petitioners/plaintiffs have filed a suit for possession by way of partition as well as declaration alleging that they are co-owners in joint possession of the land detailed and described in para no.3 of the plaint. There is specific stand taken by the Gram Panchayat, Palra in the application moved under Order 1 Rule 10 CPC that suit land is owned and possessed by it and is being used for common purposes by all inhabitants of the village from the very beginning like school, stadium, water works, pond, cremation ground, hospital etc. whereas the remaining land is being leased out by it every year. A perusal of para No. 3 also transpires that hospital, school etc. are located in the part of the disputed property.

8. Here it would also be pertinent to mention that though, the suit was filed by the petitioners/plaintiffs in the month of March, 2013 but to the utter surprise, copy of Jamabandi for the year 2003-04 was relied upon by them. Latest copy of jamabandi was neither produced along with plaint

before the trial court nor it has seen the light of the day before this court, from which, it could have been easily determined as to what is the nature of the disputed property. Moreover, Gram Panchayat is a necessary party in order to settle the matter in controversy effectively and judiciously and further this court is of the considered view that in the absence of the Gram Panchayat, Palra, matter in controversy cannot be effectively decided. The learned trial court has rightly allowed the application for impleading the Gram Panchayat, Palra as one of the defendants.

9. 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 January 31, 2017 (Annexure P-5) is upheld.

10. No order as to costs.

May 30, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No