

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

Civil Revision No.4319 of 2016

Date of Order:04.08.2017

Mukhtiar Singh

..Petitioner

Versus

Gurmail Kaur and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Kumar Singla, Advocate,
for the petitioner.

Mr. Aminder Singh, Advocate, for
Mr. Jasbir Rattan, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral).

Defendant-petitioner has challenged order dated 05.01.2016, passed by the Civil Judge (Jr. Division), Dhuri, allowing application seeking amendment of the plaint.

Marriage between the parties took place on 04.03.1962. It appears that they have been fighting in the Courts for more than four decades. Wife earlier filed an application under Section 18 of the Hindu Adoption and Maintenance Act. The application was allowed and Rs.1500/- per month was fixed as maintenance. In appeal, learned District Judge, vide judgment dated 09.04.2010, upheld the maintenance but created the charge on the land to 6 bighas of land.

Thereafter, wife-respondent filed a separate suit , although, it is styled as application under Hindu Adoption and Maintenance Act, for enhancement of the maintenance amount. During the pendency of the aforesaid suit, respondent-wife moved an application for permission to amend the suit so as to recover the arrears and challenged the transfer of the

land in favour of grand son of brother by petitioner-husband.

Learned trial Court after considering various aspects of the matter, allowed the application qua challenging transfer deed dated 03.06.2010. The learned trial Court further allowed Parwinder Singh, the transferee to be added as party. The Court while disposing of the application has recorded as under:-

“6. Admittedly, plaintiff is wife of defendant Mukhtiar Singh. Defendant has not once denied the execution of sale deed dated 03.06.2010 during the pendency of instant litigation between the parties. So, the said alienation is hit by the principle of lis-pendens. Plaintiff vide instant suit had sought enhancement of maintenance allowance and creation of charge of the same on the property of defendant. Defendant has not stated anywhere that apart from property alienated by him vide sale deed dated 03.06.2010, there is any other property which still remains in his ownership. Any outcome of the suit would have material effect on the property alienated by the defendant during the lis pendency. The statutory provision mandate the plaintiff to include in her suit the whole of the claim arising out of the cause of action in order to arrest the proliferation of litigation and to prevent the filing of different suits in respect of multiple reliefs springing from the same cause of action and it seeks to set at naught the series of suits on the same cause of action. In order to complete adjudication of the

matter between the parties and to avoid multiplicity of litigation, I am of the considered opinion that prayer of plaintiff seeking permission to challenge sale deed dated 03.06.2010 executed by Mukhtiar Singh in favour of Parwinder Singh son of Harbans Singh during the pendency of instant litigation holds weight. Thus, the instant application is allowed qua challenging sale deed dated 03.06.2010 and plaintiff is permitted to implead vendee Parwinder Singh son of Harbans Singh as defendant. Amended plaint to this effect be filed on 11.01.2016.”

Learned counsel for the petitioner has submitted that amendment would change the nature of the suit. Learned counsel for the petitioner has further submitted that the learned Court has not discussed the objections taken by the petitioner-husband and therefore, the order is non-speaking. Learned counsel for the petitioner has further submitted that Parwinder Singh, the transferee, has been added as party without their being any prayer in the application.

I have considered the submissions made by learned counsel for the parties.

In my opinion, there is no change in the nature of the suit. The wife had filed a suit for enhancement in maintenance as earlier order was passed in the year 2005. The suit still remains for enhancement of maintenance. However, the plaintiff has challenged the transfer deed executed by the husband in favour of grand son of the brother only to the limited extent that she has a preferential right of maintenance. There is no

doubt that parties to this lis are husband and wife. Wife certainly has first charge on the property of the husband to the extent of maintenance.

Learned counsel for the petitioner has further submitted that the objections taken by the petitioner-husband has not been taken into consideration.

I have gone through the order passed by the learned trial Court. The order passed is well reasoned and I do not find that detailed judgment is required to be written while allowing application for amendment of the suit.

Learned counsel for the petitioner has submitted that Parwinder Singh, transferee has been added as a party, although, neither there is any prayer in the application nor any oral prayer was made.

I have considered the submissions made by the counsel for the petitioner.

Order 1 Rule 10 of the CPC empowers the Court to add or delete any party, at any stage. The exercise of power under Order 1 Rule 10 CPC is not restricted only to the application being made by the party. The Courts has *suo-moto* power to add the parties. In this case, the transfer deed in favour of Parwinder Sigh is sought to be challenged, therefore, Parvinder Singh was necessary party. The court has exercised its discretion.

Taking into consideration the facts and circumstances of the case, I do not find any ground to interfere with the order passed by the Court below, the revision is dismissed.

August 04, 2017
nt

(ANIL KSHETARPAL)
JUDGE

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