

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Revision No.5317 of 2016

Date of decision:6.3.2017

Sunil Joshi

...Petitioner

Versus

Mamta Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.H.P.S.Ghuman, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the order dated 12.7.2016 (Annexure P-7), whereby the learned trial Court dismissed the application of the petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure ('CPC' for short) for impleadment as party defendant in the civil suit.

Notice of motion was issued.

When the case came up for hearing on 8.2.2017, service was complete but nobody had put appearance on behalf of the respondents. In the interest of justice, case was adjourned for today, granting one more opportunity to the respondents. However, neither anybody has come present to oppose this revision petition nor any request for pass over has been made on behalf of the respondents.

Heard learned counsel for the petitioner.

A bare reading of the impugned order would show that petitioner was claiming impleadment as party defendant in the suit for declaration, wherein the Will executed in favour of the petitioner by his Late grand-father Shri Rajiner Parsahd is also under challenge. In such a

situation, plaintiff should have impleaded the petitioner as party defendant, he being a necessary party. However, plaintiff did not do so, for the reasons best known to him.

Having come to know about filing of suit for declaration, challenging validity of Will in favour of the petitioner, it was compulsive necessity for the petitioner to move an application under Order 1 Rule 10 read with Section 151 CPC, but the learned trial Court failed to appreciate the above-said peculiar facts and circumstances of the case, while passing the impugned order. Having said that, this Court feels no hesitation to conclude that since the impugned order is patently illegal and has caused manifest injustice to the petitioner, the same cannot be sustained. Once the Will regarding the suit property was executed by Late Shri Rajinder Parshad in favour of the petitioner, validity of said Will cannot be decided behind the back of the petitioner, he being the only beneficiary of the Will. Under these peculiar facts and circumstances of the case, it can be safely concluded that the learned trial Court misdirected itself, while passing the impugned order and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality and perversity, the same cannot be sustained.

Consequently, the impugned order is hereby set aside. Application moved by the petitioner under Order 1 Rule 10 read with Section 151 CPC would stand allowed and he would be impleaded as party

defendant in the suit titled as 'Jugnu Joshi Vs. Mamta and another'. Since the suit is at the stage of plaintiff's evidence, learned trial Court shall grant an opportunity of filing the written statement to the petitioner. Thereafter, the additional issues may be framed, if felt necessary or the already framed issues may be recasted. Learned trial Court shall proceed further with the case to decide it expeditiously, however, in accordance with law.

Resultantly, with the above-said observations made and directions issued, the present revision petition stands allowed, however, with no order as to costs.

6.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No