

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

CR-6206-2016 (O&M)
Date of decision: 11.10.2017

RAJENDER

...Petitioner

Versus

JAGDISH AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Naresh Jain, Advocate
for the petitioner.

Mr. Amit Singla, Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 12.09.2016 passed by the Civil Judge (Jr. Div.), Hisar whereby application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure (in short 'the CPC') for impleadment as a party has been dismissed.

Counsel for the petitioner has submitted that respondent No.1-Jagdish was declared as a successful candidate in the general elections held in January, 2016. The petitioner was also in the fray for being elected as Sarpanch of the village but got votes next to Jagdish. The petitioner filed an application before the Deputy Commissioner averring that respondent No.1 has procured fake educational certificate/document to make himself eligible

for contesting election for the post of Sarpanch. On the basis of application submitted by the petitioner, inquiry was conducted in the matter and eventually show cause notice was issued by the Deputy Commissioner, Hisar calling upon the plaintiff to show cause as to why he should not be removed from the post of Sarpanch. The said show cause notice has been challenged by the respondent/plaintiff by seeking declaration that certificate of Secondary School Examination, 2000 issued in favour of the respondent/plaintiff by the proforma defendant No.6 is legal and valid for all purposes with consequential relief of permanent injunction. It is argued with vehemence that in case suit of the respondent/plaintiff is dismissed and his election as Sarpanch is set aside by the competent authority, the petitioner may be appointed as Sarpanch of the village, therefore, the petitioner is required to be impleaded as a party in the lis. Another submission made by counsel is that the respondent/plaintiff availed statutory remedy of appeal against the order passed by the Deputy Commissioner but remained unsuccessful, as such suit for declaration is not maintainable.

Counsel representing respondent No.1, on the contrary, has supported the impugned order with the submission that the trial Court on correct interpretation of Order 1 Rule 10(2) CPC has rightly held that presence of the petitioner is not necessary to completely, effectively and properly adjudicate upon the matter involved in the suit, thus, the respondent cannot be compelled to litigate/contest against the petitioner.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Be that as it may, on the basis of application allegedly filed by the petitioner, proceedings were initiated by the Deputy Commissioner, Hisar against the respondent/plaintiff with regard to his election as Sarpanch of Village Talwandi Rukka. The respondent/plaintiff has filed a suit for declaration that the certificate of Secondary School Examination, 2000 issued by the Board of Secondary Education, Delhi, 77, Vipin Garden, New Delhi is legal and valid for all purposes.

The petitioner laid challenge to election of the respondent/plaintiff solely on the ground that the aforesaid certificate is not genuine. The controversy with regard to genuineness of the certificate in question can be decided by the Civil Court, in absence of the petitioner. The respondent/plaintiff has not claimed any relief against the petitioner. The plaintiff being *dominus litis* cannot be compelled to contest against a party against whom he does not wish to contest. In this context, reference can be made to judgment of this Court **Jaspal Kaur VS. Hazara Singh and anr., 1998 (1) PLR 676.**

So far as the plea that suit filed before the Civil Court is not maintainable, such a plea can well be raised by the contesting defendant particularly when the Deputy Commissioner, Hisar who has issued the show cause notice has been impleaded as a party as well. In this view of the matter, I do not find any patent error much less illegality in the impugned

order warranting intervention in exercise of supervisory jurisdiction under
Article 227 of the Constitution of India.

Dismissed.

11.10.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No