

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

CR No.7311 of 2017(O&M)

Date of decision: 31.10.2017

Deepak Jaiswal

.....Petitioner

VERSUS

Munish Jaiswal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Naresh Kumar Manchanda, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 10.10.2017 (Annexure P-5) passed by the Civil Judge (Junior Division), Moga whereby application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') for impleading respondent No.1 as a party has been allowed.

Counsel for the petitioner has submitted that the petitioner filed a suit for possession as a tenant/licencee against Parveen Kumar – respondent No.2 regarding the area detailed in head-note of the plaint. In the suit, the petitioner claimed possession for himself as well as on behalf of respondent No.1, real brother of the petitioner. The petitioner has already adduced his evidence and at that stage, the instant application has been filed by respondent No.1. It is argued with vehemence that in case respondent No.1 is allowed to be impleaded as a party, it would result in denovo trial causing delay in recovering possession of suit property from encroacher namely Parveen Kumar. Another submission made by counsel is that as the petitioner has claimed possession of suit property occupied by

an unauthorized occupant both for himself and his brother Munish Jaiswal, no prejudice shall be caused to respondent No.1 in case he is not permitted to be impleaded as a party. In addition, it is argued that the petitioner is the master of his case and he cannot be compelled to contest against a party against whom he has not claimed any relief. In support of his contention, he has referred to judgments of this Court **Reema Rani Vs. Gurmukh Singh and another, 2004(4) RCR (Civil) 761, Ranbir Singh and another Vs. Ran Singh and others, 2006(2) RCR (Civil) 278 and Nirmala Sharma and others Vs. Jagdish Lal and others, 2014(69) RCR (Civil) 773.**

I have heard counsel for the petitioner, perused the paper-book particularly various annexures appended with the petition including the order impugned.

Perusal of the averments raised in the plaint (Annexure P-1) leaves no manner of doubt that the petitioner has prayed for a decree of possession claiming himself and respondent No.1 being jointly entitled to possession of the said property on the basis of inheritance to their late father Sh. Om Parkash. Indisputably, there is dispute between the petitioner and respondent No.1 and the litigation is pending in the Court. Counsel for the petitioner has not disputed that respondent No.1 has right and interest in the subject matter involved in the present suit. Respondent No.1 may not be a necessary party for complete and effective adjudication of the matter in controversy between the petitioner and alleged encroacher but he is certainly a proper party to protect his interests in the property in question more particularly in the circumstances that petitioner and respondent No.1 are not at the same wavelength and there is litigation between the brothers on certain issues. In this view of the matter, I do not

find any error much less illegality in the order impugned warranting intervention in exercise of supervisory jurisdiction of this Court.

To be fair to the petitioner, counsel has referred to certain judgments passed by this Court. There cannot be any dispute about the settled position in law that the plaintiff is a *dominus litus* and he cannot be compelled to fight litigation against a person against whom he does not wish to contest. However, in view of the provisions of Order 1 Rule 10 (2) CPC, the Court is competent to strike out or add parties at any stage of the proceedings, either upon or without the application of either party on such terms as may appear to the Court to be just. It is further provided that the Court may add name of any person ought to have been joined as a plaintiff or defendant or whose presence before the Court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Taking into consideration the controversy involved in the present lis coupled with that respondent No.1 is competent to file independent suit seeking possession against Parveen Kumar, the petitioner cannot derive any advantage to his contentions from the referred authorities.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

OCTOBER 31, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no