

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3517 of 2016 (O&M)
Date of Order:22.03.2018

Gulshan Kumar and another

..Petitioners

Versus

Prithvi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Partap Singh, Advocate,
for the applicants-petitioners

Mr. Rajesh Arora, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J (Oral)

C.M.Nos.4170-CII-2018

Allowed as prayed for.

Annexures P-6 and P-7 are taken on record.

CR No.3517 of 2016

The dispute in the present case is with regard to a public passage/street. Petitioners before this Court, who had filed an application under Order 1 Rule 10 of the Code of Civil Procedure, plead that the aforesaid public passage/street is being encroached upon by the plaintiffs and the proceedings in the court are being used to continue the illegal encroachment. Hence they filed an application for being impleaded as defendants in the case.

Learned trial court rejected the application while observing that the Gram Panchayat and the Block Development and Panchayat Officer are already party and the petitioners-applicants are residing far away from the

disputed place.

It is the case of the applicants that they pass through this passage for going to their fields and the plaintiffs are making the efforts to encroach upon the same.

Learned counsel for the petitioners has pointed out that the Sarpanch of the Gram Panchayat has colluded with the plaintiffs and when appeared in the evidence, learned trial court had declared him hostile. He has pointed out that from the reading of the evidence given by the Sarpanch, it is apparent that he has colluded with the plaintiffs. Hence, learned counsel submits that since the dispute is with regard to encroachment on a public street, therefore, the applicants who are using the passage are necessary party.

On the other hand, learned counsel for the respondents has vehemently opposed the revision petition and has submitted that the plaintiffs are dominus litis and, therefore, against the wishes of the plaintiffs, no one can be impleaded as party. He has further submitted that not only the Gram Panchayat but even the Block Development and Panchayat Officer, Thanesar, is also party-defendant. He has submitted that once the officials defendant is available, there is no question of any collusion between the plaintiffs and the Gram Panchayat.

This Court has considered the respective submissions of learned counsel and with their able assistance gone through the paper book.

The dispute in the present case is with regard to a width of a public passage. A reading of the statement given by the Sarpanch, which has been placed on file, Annexure P-7, shows that the Sarpanch of the Gram Panchayat has not acted as a trustee of the public property which is expected

of him. The Sarpanches are elected to preserve and protect property of the Gram Panchayat, which is for the welfare of the residents of the village. However, the Sarpanch appears to have *prima-facie* colluded with the plaintiffs. The learned trial court also declared him hostile on the request made by counsel for the defendants.

Such being the position, the applicants, who are petitioners, herein claim to be user of the aforesaid street and are finding difficult to go cross the aforesaid street want to be party-defendants.

In the considered opinion of this Court, learned trial court committed an error in rejecting the application.

Learned counsel for the respondents has further submitted that another revision petition i.e. Civil Revision No.7517 of 2015 is pending in this Court arising from the order passed by the learned first appellate court, vacating the injunction granted in favour of the plaintiffs.

In the considered opinion of this court, that revision petition would have no bearing in the present dispute as this Court is only adjudicating upon whether the petitioners are necessary party or not.

Keeping in view the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the order passed by the trial court dated 16.02.2016 is set aside and the applicants are impleaded as defendants.

However, since, the trial has made substantial progress, therefore, the applicants would be granted one opportunity to file their written statement and they would also get an opportunity to cross-examine the witnesses produced by the plaintiffs.

Needless to say that the petitioners, who are being impleaded as

party-defendants shall also be granted opportunity to lead their evidence.

Since, the dispute is with regard to a public passage/street, learned trial court is requested to conclude the trial of the case as expeditiously as possible.

With these observations, the revision petition is allowed.

March 22, 2018
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(ANIL KSHETARPAL)
JUDGE

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