

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.3483 of 2018

.....

Date of decision:24.5.2018

Umesh Kumar

.....Petitioner

v.

Naresh Kumar and others

.....Respondents

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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**Present:** Mr. Abhinav Sood, Advocate for Mr. Vikram Singh, Advocate  
for the petitioner.

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**Inderjit Singh, J.**

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 31.3.2018 (Annexure-P.7) passed by the learned Civil Judge (Junior Division), Faridabad, being wrong and illegal.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that Umesh Kumar, Smt. Manju, Jagbir Singh and Susheela Bala-plaintiffs filed suit against Naresh Kumar and others-defendants seeking possession by way of partition by metes and bound with consequential relief of permanent injunction where the applicant is claiming to be one of the co-owners in possession of the suit property as detailed in the plaint. During the pendency of the suit, two applications

were filed one under Order 6 Rule 17 CPC and second Order 1 Rule 10 CPC by the plaintiff No.1-petitioner. It has been stated that the respondents-defendants had started illegal construction over the suit property without any partition and beyond their shares in violation of the rights of the applicant. It has further been submitted that the respondents are also threatening to alienate the remaining vacant portion of the suit property. It has been stated that the applicant in his plaint has mentioned specific shares of all the parties and sought partition of the suit land according to the shares mentioned in para No.4 of his plaint to avoid any dispute between the parties.

In the written statements filed by the defendants-respondents, it has been specifically pleaded that respondents No.7 to 9 did not have any share in the suit land. Respondents No.5 to 9 are legal heirs of one Khacheru Mal, the share of their common ancestor in the suit land was mutated in the names of respondents No.5 and 6. The plaintiff-applicant filed these applications to delete the names of respondents No.7 to 9 on the plea to change the share of respondents No.5 and 6 from 2/165 to 2/66 share each. It has also been stated that the respondents filed the reply by stating that the applicant was well aware of the Will executed by Khacheru Mal in favour of respondents No.5 and 6 and the mutation No.3366, despite said knowledge, the applicant impleaded respondents No.7 to 9 as parties to the suit.

The learned Civil Judge (Junior Division), Faridabad, disposed of both the applications vide the impugned order dated 31.3.2018. I have gone through the impugned order. A perusal of the record shows that it is a

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suit for possession by way of partition in which all the co-sharers are to be impleaded. Khacheru Mal was also one of the co-owner and respondents No. 5 to 9 are his natural legal heirs. Though the defendants-respondents state that Khacheru Mal executed a Will in favour of respondents No.5 and 6 but even then respondents No.7 to 9 are the necessary parties being the natural legal heirs of Khacheru Mal. If at any stage dispute regarding the execution of the Will by Khacheru Mal arises, then the whole matter has to be decided by impleading them as party. The names of respondents No.7 to 9 cannot be deleted on the plea that the land had been mutated in the names of respondents No.5 and 6. Similarly, regarding changing of shares of respondents No.5 and 6 in whose favour Will had been executed by Khacheru Mal, it is for the Court below at the time of final decision to decide regarding the shares.

Therefore, the findings given by the Court below are correct. In my view, these applications should have been specifically dismissed. The Court below instead used the words disposed of. A perusal of the record shows that no illegality has been committed by the Court below by not allowing these applications.

Therefore, finding no merit in this civil revision petition, the same is dismissed.

May 24, 2018.

**(Inderjit Singh)**  
**Judge**

\*hsp\*

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |