

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 203

CR-3938-2016

Date of decision : 25.09.2018

Arvinder Singh and another

..... Petitioners

VERSUS

Parshotam Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Parveen K. Kataria, Advocate, for the petitioners.

Mr. Ishan Sharma, Advocate, for respondents No. 1, 3 and 4.

Mr. Swapan Shorey, Advocate,
for respondents No. 6 to 9, 13, 19, 20 and 22.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 03.05.2016, passed by the Additional Civil Judge (Senior Division), Moga (for short, the Trial Court) through which an application filed by the petitioners under Order 6 Rule 17 read with order 1 Rule 10 CPC for amending their plaint and impleading of parties, has been rejected.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the petitioners filed a suit seeking therein separate possession by way of partition of land detailed and described in the headnote of the plaint (for short, the suit property). After the Trial Court framed the issues and both the parties had led their respective evidence, an application was filed by the petitioners under Order 6 Rule 17 read with order 1 Rule 10 CPC for impleading Resham Singh s/o Saudagar Singh, Jagtar Singh s/o Narain Singh and Narinder Singh s/o Natha Singh @ Lakha Singh as defendants on the ground that they were also co-sharers in

the suit property but inadvertently had not been arrayed as defendant. The application was dismissed by the Trial Court through the order impugned in the present proceedings.

Learned counsel for the parties have been heard.

It cannot be disputed that a suit for partition cannot be effectively adjudicated upon till all the co-sharers in the suit property are before the Court. Thus, all the co-sharers in the property of which partition is sought are necessary parties.

All that the petitioners sought to do through the application filed by them under Order 6 Rule 17 read with order 1 Rule 10 CPC was to implead three of the remaining co-sharers of the suit property who had earlier not been arrayed as defendants. This was sought to be done without causing any prejudice to either party to the suit as also without changing the nature of the suit. It is true that there is some delay on the part of the petitioners in filing of their amendment application but in view of the observations made earlier and because in their written statement the respondents had not raised any objection with regard to the maintainability of the petitioners' suit for non-joinder of necessary parties and thus with regard to this issue not put them to notice at the initial stage of the trial as also for the reason that learned counsel for the petitioners has stated before this Court that in case the application filed by the petitioners is allowed, the petitioners would not lead any evidence at all, subject to payment of costs of ₹20,000/- to be paid by the petitioners to the contesting respondents No. 1, 3 and 4 (to be shared by them equally), after setting aside the impugned order, the petitioners are permitted to implead Resham Singh s/o Saudagar Singh,

Jagtar Singh s/o Narain Singh and Narinder Singh s/o Natha Singh @ Lakha Singh as defendants No. 24 to 26 in the suit.

Since the suit had been filed in the year 2013, the Trial Court is requested to take all necessary steps to expedite service upon the newly added defendants in the suit and within four months thereafter to finally adjudicate upon the petitioners' suit.

The present petition is allowed in the above terms.

25.09.2018
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[DEEPAK SIBAL]
JUDGE

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