

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

1. CR No.3610 of 2017 (O&M)
Date of decision : 24.04.2018

Parwinder Kaur

...Petitioner

Versus

M/s Omex Limited

...Respondent

2. CR No.4870 of 2017 (O&M)
Date of decision : 24.04.2018

Tajinder Kaur

...Petitioner

Versus

M/s Omex Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sukhdip Singh Brar, Advocate for the petitioner.

Mr. Munish Gupta, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

This order of mine shall dispose of CR Nos.3610 and 4870 of 2017 as common issue needs determination. Learned counsel for the parties are also agreed that both the revision petitions can be disposed of by a common order.

In both the revision petitions, the plaintiff-petitioner had filed a

suit for declaration claiming that the plaintiff is allottee of residential unit in a Housing project named as “ROYAL VIEW HOMES” developed by defendant-company. Prayer was also made for grant of relief of mandatory injunction.

In the written statement, defendant disclosed that in fact the residential unit allotted to the plaintiff has already been cancelled and such residential unit has been allotted in favour of the person named in the written statement. Consequently, the plaintiff filed an application under Order 1 Rule 10 CPC with a prayer to implead the subsequent allottee as a party defendant and amend the plaint so as to seek the declaration that such allotment in favour of the defendant sought to be impleaded would not effect his/her right. An application under Order 1 Rule 10 CPC has been dismissed by the Court on the ground that such party shall not be a necessary party and the Court is in a position to decide the suit without impleading subsequent allottee as a party.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the paper book.

It is the stand of the defendant that the residential unit which was allotted to the plaintiff was cancelled and thereafter re-allotted to the person named therein. Since, the plaintiff has already filed a suit claiming declaration that the plaintiff is lawful allottee of the residential unit and relief of mandatory injunction and permanent injunction has also been sought for, in the considered opinion of this Court, any subsequent allottee of the aforesaid residential unit shall be necessary party for complete adjudication of the dispute between the parties.

Learned trial Court has wrongly held that the subsequent allottee shall not be a necessary party.

Secondly, learned trial Court has refused to going into the prayer made in the application for amendment of the plaint on the ground that the separate application be filed. In the considered opinion of this Court, prayer made in the application under Order 1 Rule 10 CPC and under Order 6 Rule 17 CPC are inter-dependent. The plaintiff moved an application to implead the subsequent allottee as a party and prayed for consequent amendment in the plaint. Such being the position, learned trial Court erred in refusing to go into the prayer for amendment of the plaint by directing the plaintiff to file a separate application.

Taking into consideration the facts as noticed above, this Court is of the considered opinion that the application filed under Order 6 Rule 17 CPC and Order 1 Rule 10 CPC deserves to be allowed.

In view of the above, the order under challenge is set aside.

Revision petition is allowed.

The plaintiff is directed to file amended plaint. The Court would proceed with the trial of the case after service of notice on the added defendant.

24.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No