

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

Civil Revision No.4373 of 2017

Date of Decision:07.08.2018

Jagir Singh and others Petitioners
Vs
Mohinder Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. D.V. Sharma, Sr. Advocate with
Ms. Shivani Sharma, Advocate
for the petitioners.

Mr. Amit Dhawan, Advocate
for respondents No.1 to 5/caveators.

Ms. Eshjyot Walia, Advocate
for respondent No.7.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 31.05.2017 passed by the Addl. Civil Judge (Sr. Divn.) Nakodar, dismissing the application under Order 1 Rule 10 read with Section 151 CPC for impleading Rajwant kaur daughter of Harnek Singh as a necessary party.

[2]. Perusal of the record would show that a suit for separate possession by way of partition was filed by the five plaintiffs including Satbir Singh son of Harnek Singh as plaintiff No.4 and Harbans Kaur widow of Harnek Singh as plaintiff No.5. Plaintiff No.5 sought to implead her daughter Rajwant Kaur to

be party to the suit.

[3]. Written statement to the suit was filed on behalf of defendants No.2, 4, 5 and 6 wherein objection was taken with regard to suit being bad for nonjoinder and misjoinder of the necessary party. Written statement was filed on behalf of defendant No.7 taking the same objection.

[4]. In the application under Order 1 Rule 10 CPC, applicant/plaintiff No.5 alleged that the plaintiffs have filed the suit against the defendants, who were co-sharers, but due to inadvertent error name of Rajwant Kaur daughter of Harnek Singh was left to be written in the array of plaintiffs. Wherein Rajwant kaur was having interest in the property and her name was also recorded in the jamabandi. Since Rajwant Kaur was also one of the co-sharers, therefore, she was necessary party to be impleaded.

[5]. On 11.07.2017, following order was passed by this Court:-

“Notice of motion for 31.08.2017.

Mr. Amit Dhawan, Advocate, accepts notice on behalf of the caveator.

Learned counsel for the caveator seeks time to explain whether share of Rajwant Kaur is over and above the entitlement of her father Harnek Singh for which widow Harbans Kaur has claimed the share as co-plaintiff.

Till the next date of hearing, trial Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

[6]. Today, during course of arguments, learned counsel for the respondents vehemently opposed the prayer for impleadment of Rajwant Kaur to the suit on the ground that the rights of the defendants would be prejudiced as they have already taken plea of the suit being bad for non-joinder of necessary parties.

[7]. Learned counsel by relying upon **M/s Honey Bee Natural Products Private Limited vs. Admarjodh Singh, 2006(2) R.C.R. (Civil) 279; Ankur Bajaj vs. Hans Raj & others, 2012(2) PLR 204; Karnail Singh vs. Gurbax Singh and others, 2006(1) R.C.R. (Civil) 218** contended that after leading of the evidence by the parties, filing of application is not *bona fide* as the plaintiffs have taken a risk to continue with the suit without impleading the necessary party.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. In the impugned order reference has been made to the proceedings dated 29.11.2016, in which learned counsel for the plaintiffs had made some statement. The said statement has been refuted by learned counsel for the plaintiffs.

[10]. At this stage, this Court can appreciate that in a suit for partition all the plaintiffs and defendants are entitled to their respective claims/shares irrespective of their status being of plaintiffs or defendants. The suit has reached to the stage of rebuttal (if any) and arguments. The issues were framed on 04.02.2002, wherein no issue of non-joinder of necessary parties was framed by the trial Court.

[11]. In the instant case Rajwant Kaur is the daughter of Harnek Singh, whose entitlement in the capacity of co-sharer is the subject matter of suit for partition amongst all the co-sharers. At the most the chunk belonging to Harnek Singh would be separated. Thereafter *inter se* entitlement of heirs of Harnek Singh would start. This is being considered just for an instance, otherwise status of Rajwant Kaur as per revenue record is to be considered. Inclusion of Rajwant Kaur may or may not give rise to any prejudice to the other defendants except her family members from the clan of Harnek Singh. Harbans Kaur widow of Harnek Singh has already been impleaded as plaintiff No.5. Name of Rajwant Kaur duly finds mention in the revenue record. Satbir Singh has already been impleaded as plaintiff No.4. Her inclusion in the array of parties would enable the Court to decide the controversy once for all without leaving any scope for further litigation. Rajwant Kaur

would succeed the share in accordance with law. There may be some delay in moving the application, but the Court can visualize the substantial cause of justice in impleading Rajwant Kaur as party to the suit.

[12]. Each case depends upon its independent facts. The precedents cited by learned counsel for the respondents cannot be applied to the facts of the present case inasmuch as that Rajwant Kaur would claim the share in the land allotted in the name of Harnek Singh viz-a-viz. the claim of other heirs of Harnek Singh in addition to her individual status (if any) in the revenue record. The facts noticed in the aforesaid precedents do not squarely cover the present controversy particularly when no issue was struck in the present case with regard to the suit being bad for non-joinder of the necessary party. At this stage, no final opinion with regard to the entitlement of Rajwant Kaur can be made viz.-a-viz. her individual entitlement based on inheritance and revenue record.

[13]. For the reasons recorded hereinabove, I deem it appropriate to allow this revision petition. The impugned order dated 31.05.2017 passed by the Addl. Civil Judge (Sr. Divn.) Nakodar, is set aside. Rajwant Kaur is allowed to be impleaded as party to the suit. Normal consequences to follow.

August 07, 2018

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No