

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

CR No.7880 of 2018

Date of Decision : 20.11.2018

Kirti Bardhan

.....Petitioner

Versus

Payal Mankand @ Jyoti and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Amit Dhawan, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

This revision is directed against the impugned order dated 17th October, 2018 passed by the Ld. Civil Judge (Junior Division), Phagwara in Civil Suit No.150 of 2018, vide which the application of the present petitioner/defendant No.1 in the said civil suit under Order 1 Rule 10(2) of the Civil Procedure Code (for short, 'the CPC'), seeking to implead his own mother Smt. Veena Rani, who incidentally happens to be the mother-in-law of the respondent/plaintiff-Smt. Payal Mankand @ Jyoti, was dismissed.

2. It may be mentioned that the suit was filed by the said respondent for permanent injunction against the present petitioner and one Darshan, to restrain them from locking the main gate of the disputed property described in the schedule/heading of the plaint. The petitioner happens to be the real brother of the respondent's deceased-

husband. It was the respondent's case that her husband and the respondent No.1 were joint owners of the disputed property (M/s Kay Gee Resorts) and that there was no partition between them during their lifetime, but that partition suit between the parties is nevertheless pending in the Court of Ld. Civil Judge (Junior Division), Phagwara.

3. The petitioner-defendant sought impleadment of his own mother as an additional defendant in the aforesaid suit which application was rejected by the Ld. Trial Court after observing *inter alia* -

*“It is to be kept in mind that plaintiff is dominous litus of suit filed by her and no direction can be given to her to implead a new party unless or until the court comes to the conclusion that the said person is a necessary person without whom no effective order can be passed. Moreover, a party cannot be added under order 1 rule 1 CPC in order to enable him to import an altogether new cause of action in the pending litigation. The addition of the new party must be consistent with the scope and setting of pending litigation the nature and character of the suit cannot be altered. Reliance in this regard can be placed in the case titled as **Mt. Bindru Vs. Sada Ram AIR 1960 J&K 67**. The grounds on the basis of which applicant Veena Rani wants her to be impleaded as party cannot be adjudicated before this court in the present suit. The validity and implication of transfer of rights of Kayee Gee Resorts can be*

agitated by filing a separate suit. The applicant can avail her remedy as per law. Accordingly I do not find any merit in the application. The same is accordingly dismissed”.

4. This Court finds no illegality or impropriety in the aforesaid observations of the Ld. Trial Court; If anything, it may be further observed that even assuming that the petitioner's mother Smt. Veena Rani is actually a necessary party to the proceedings, by any logic, still her conscious non-impleadment by the respondent/plaintiff would have the effect of exposing her own suit to peril, since in such event the same would be liable to be dismissed for such non-joinder of a necessary party. It is not clear as to how the petitioner-defendant would be prejudiced if the logical consequences in such an eventuality do follow. It therefore would clearly appear that the endeavour to get his own mother impleaded as a co-defendant in the said suit is an oblique method of seeking to misdirect the regular course of the trial in the suit, from that envisaged by the plaintiff/respondent

5. No merits.

6. Dismissed.

November 20, 2018

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No