

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

CR No.8349 of 2016 (O&M)

Date of decision : 20.03.2018

Virender Singh (deceased) through LRs

...Petitioners

Versus

Smt. Chanderpati and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chanakya Pandit, Advocate for the petitioners.

Mr. Kamal Mor, Advocate for respondent No.1.

Mr. Sushil Jain, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

This revision petition has been filed by the legal heirs of plaintiff No.1, against the order passed by the trial Court dated 03.11.2016 refusing to transpose plaintiff No.2 as proforma defendant.

Four plaintiffs jointly filed a suit for specific performance of the agreement to sell with consequential relief of permanent injunction. During the pendency of the suit, plaintiff No.1 filed an application for transposing plaintiff No.2 as proforma defendant on the allegation that plaintiff No.2 has colluded with defendant. The application was opposed by plaintiff No.2, wherein he stated that he only stated the correct facts and he cannot be transposed as proforma defendant.

Learned trial Court after considering the various aspects of the

case, dismissed the application.

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

Learned counsel for the appellant has submitted that since plaintiff No.2 has colluded with the defendant, therefore, the plaintiff No.2 has no right to remain as plaintiff in the suit. He submitted that hence plaintiff No.2 should be transposed as proforma defendant.

This Court has considered the argument, however, do not find any substance therein. Once, plaintiff No.2 has jointly filed the suit alongwith the remaining plaintiffs, he cannot be transposed as defendant against his wishes.

Learned counsel for the petitioners insisted that under Order 1 Rule 10 CPC, the Court has a power to strike out or add any party. Order 1 Rule 10 CPC is extracted as under:-

“10. Suit in name of wrong plaintiff.”-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant,

be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

*(4) **Where defendant added, plaint to be amended**—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.*

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

Sub-Rule 1 of Rule 10 of Order 1 CPC provides that if a suit has been instituted in the name of a wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit was instituted through a bona fide mistake, may order a person to be substituted or added as plaintiff. Whereas Sub-Rule 2 of Rule 10 of Order 10 CPC deals with striking out the name as plaintiff or defendant and addition of the party whose presence before the Court is felt necessary.

In the considered opinion of this Court, Order 1 Rule 10 CPC cannot be used by plaintiff No.1 to transpose plaintiff No.2 as proforma

defendant.

In view of the aforesaid, there is no ground to interfere with the impugned order passed.

Revision petition is dismissed with costs of ₹25,000/-

20.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No