

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

Sr. No.205

C.R. No.2465 of 2016

Date of decision: 20.03.2019

Nazar Singh and another

....Petitioners

versus

Harmail Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Amit Bhanot, Advocate
for the petitioners.

Mr. Chander Shekhar Singhal, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 04.02.2016 passed by the Civil Judge (Junior Division), Roopnagar (for short – the Trial Court) allowing the application filed by respondent No.1/plaintiff under Order 1 Rule 10 CPC seeking therein to implead one Jagir Singh as a defendant in his suit.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondents No.1 and 2/plaintiffs filed a suit seeking therein to be declared co-owners, co-sharers and in joint possession of the land belonging to late Thakur Singh. Respondents No.1 and 2 had further challenged the Will dated 23.10.2006 in favour of the petitioners. Permanent injunction to restrain the petitioners from interfering in the joint possession of respondents No.1 and 2 was also

sought. On being put to notice, the petitioners, who are defendants No.1 and 2 in the suit, appeared before the Trial Court and filed their written statement through which they refuted the claim set up by respondents No.1 and 2. Thereafter, the Trial Court framed issues. While respondents No.1 and 2 were in the midst of leading their evidence, an application was filed by respondent No.3-Jagir Singh under Order 1 Rule 10 CPC seeking his impleadment in the suit as a defendant on the ground that he was one of the heirs of Thakur Singh. Such application was dismissed by the Trial Court on 05.03.2015. Such order was challenged by respondent No.3-Jagir Singh before this Court through **C.R. No.3228 of 2015 – Jagir Singh vs. Nazar Singh and others**, which petition, after notice, was dismissed as withdrawn on 11.04.2016. While the aforesaid revision petition was pending before this Court, respondents No.1 and 2 filed an application before the Trial Court under Order 1 Rule 10 CPC seeking therein to implead respondent No.3-Jagir Singh as a defendant in their suit on the ground that he was one of the legal heirs of Thakur Singh. Such application was allowed by the Trial Court occasioning the filing of the present proceedings.

Learned counsel for the parties have been heard.

The sole question to be adjudicated upon is whether respondent No.3-Jagir Singh is a necessary or proper party in the suit preferred by respondents No.1 and 2. It is the admitted position that respondent No.3-Jagir Singh had filed an application under Order 1 Rule 10 CPC seeking his impleadment as a defendant in respondents No.1 and 2's suit. Such application had been filed on the ground that he was the only legal heir of Thakur Singh whose property was the subject matter of the suit. The Trial Court, after holding that respondent No.3-Jagir Singh had neither furnished

any proof nor filed any documents showing his relationship with Thakur Singh, through order dated 05.03.2015 had dismissed his application. Against this order respondent No.3-Jagir Singh had filed a revision petition before this Court being **C.R. No.3228 of 2015 – Jagir Singh vs. Nazar Singh and others**, which was dismissed as withdrawn on 11.04.2016. Thus, the findings of the Trial Court with regard to respondent No.3-Jagir Singh being not a necessary or proper party attained finality. That being so, through the impugned order, the Trial Court erred in returning a finding contrary thereto, especially when it is the admitted position that no additional material had come on the record of the Trial Court and that the prayer to implead respondent No.3-Jagir Singh was based on the same set of facts which were before the Trial Court when respondent No.3-Jagir Singh's application had been dismissed.

In view of the above, the impugned order is set aside.

The petition is allowed.

No costs.

(DEEPAK SIBAL)
JUDGE

March 20, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No