

CR No.3354 of 2018

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

**CR No.3354 of 2018
Date of decision:11.02.2019**

Neelam Jain

... Petitioner

Vs.

Mange Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Sanjay Vij, Advocate
for the petitioner.

Mr. Mange Ram/respondent no.1 in person

AMIT RAWAL J.

The present revision petition is directed against the impugned order dated 26.04.2018 (Annexure P-1), whereby, an application under Order 1 Rule 10 of Code of Civil Procedure (Annexure P-2) at the instance of respondent No.1 in a suit for declaration with consequential relief of permanent injunction filed by the petitioner/plaintiff, has been allowed.

Mr. Sanjay Vij, learned counsel appearing on behalf of the petitioner/plaintiff submitted that petitioner has filed civil suit seeking declaration by challenging the notices dated 30.12.2013 and 14.10.2016 to be null and void on various grounds. However, respondent no.1/applicant sought the impleadment on the ground that such violations were committed by the plaintiff which has caused damage to the house and resulted into withdrawal of the occupation certificate and resumption on the basis of his

complaint. In such circumstances, the Court below without noticing the principle of *dominus litis* allowed applicant-Mange Ram to be impleaded as party, and therefore, the impugned order is not sustainable in the eyes of law.

Mr. Mange Ram/respondent No.1, who is present in person submitted that he is immediate neighbour and had right to become the party as the construction done by the plaintiff was against the sanctioned plan. The officials of HUDA and concerned Municipal Authority colluded with the plaintiff and it is only on the submission of complaint, action of resumption and withdrawal of the occupation certificate was taken, therefore, his presence is essential and necessary for adjudication of the lis.

I have heard the learned counsel for the petitioner and respondent no.1 in person and of the view that there is force and merit in the submissions of Mr.Vij, for, it is a matter of record that occupation certificate issued to the petitioner on 13.08.2013 was withdrawn on 30.12.2013 resulting into passing of redemption order dated 14.10.2016.

In view of such fact, the petitioner-plaintiff has not claimed any relief against respondent no.1, who sought to be impleaded as defendant. Even otherwise, by impleading the defendant, could not explain what evidence he could have led in a suit seeking declaration. A person who is not a necessary or proper party cannot be permitted to be fastened upon the plaintiff in the absence of any relief. Once the authorities have already initiated action at their behest, his presence would not help the Court in adjudication of the lis. The law regarding impleadment is no longer res

integra in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay and others 2017(1) RCR (Civil) 727**, wherein, by noticing the provisions of Order 1 Rule 10 CPC, it was held that plaintiff being *dominus litis* cannot be forced to add any person as a party to the suit unless it is held keeping in view the pleadings and relief claimed therein that a person sought to be impleaded as a party is necessary party and without his presence neither the suit can proceed nor the relief can be granted.

At this stage, Mr. Mange Ram/respondent no.1 in person submitted that in numerous paragraphs of the plaint, his name has been referred to.

On instructions from his client, Mr. Sanjay Vij, learned counsel submitted that he would move an appropriate application for amendment for deletion of his name.

The impugned order suffers from illegality and perversity and cannot be sustained. Resultantly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

February 11, 2019

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No