

CR-5580-2016 (O&M)

203

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

CR-5580-2016 (O&M)

Date of decision : 15.05.2019

M/s DSR Developers Pvt. Ltd.

... Petitioner

Versus

Ramesh Chand Gupta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Brijender Kaushik, Advocate
for the petitioner.

Mr. Shrey Goel, Advocate
for respondent No.2.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 21.07.2016 (Annexure P-11), whereby an application of the applicant/respondent No.2, under Order 1 Rule 10 of the Code of Civil Procedure for impleadment, has been allowed.

The plaintiff-Ramesh Chand Gupta, in a representative capacity, in a suit under Order 1 Rule 8 of CPC sought declaration for declaring the approval of the revised lay out plan of TP Scheme of un-built area No.4-B, Ambala City relating to khasra Nos.471 and 476, of defendant No.1, situated adjacent to Bal Bhawan, Mauja Patti Mehar Hadbast No.58 and other various others permissions to be in contravention of notification dated 09.08.1963 of the Governor of Punjab, being religious place of Thakur Dwara, on various grounds. The suit is dated 06.08.2012. During the pendency of the suit, respondent No.2-Prit Pal Singh, submitted an

CR-5580-2016 (O&M)

application dated 03.08.2015, under Order 1 Rule 10 of CPC, claiming himself to be resident of Ambala City, for impleadment. It was alleged that defendant No.1 being influential person had obtained the approval of the drawing and as a result thereof, drainage system of Ambala City had choked, therefore, the person being interested in the cause of public, wanted to join the proceedings. The aforesaid application was contested by defendant No.1, vide reply (Annexure P-10), praying for dismissal on account of non-maintainability, abuse of the process of law and denied that respondent No.2 had any interest as his address was 3 kms from the property in dispute, which is far away place.

Mr. Kaushik, learned counsel appearing on behalf of the petitioner submitted that there was no interest of respondent No.2 to be impleaded and the trial Court has erroneously allowed the application as the application was not only vague, but bereft of any explanation, as to how and under what circumstances, respondent No.2 was affected. Even the provisions of Section 21 of the Limitation Act with proviso, have not been taken care of. The plaintiff had earlier filed an application under Order 1 Rule 10 of CPC, calling for interested party to join the proceedings, but despite the publication, no interested person came forward to join the proceedings. There would be no end to such entertainment of the application. Great prejudice has been caused as it would tantamount to new set of pleadings or cross-examination of the witnesses.

Mr. Shrey Goel, learned counsel appearing on behalf of the respondent No.2, supported the impugned order, under challenge, and submitted that the plaintiff had already filed the suit and left the proceedings and it is, in such circumstances, the application was filed to espouse the

CR-5580-2016 (O&M)

cause as taken in the aforesaid pending suit. This fact was aware from the docket of amended title. The attention of this Court was also drawn to the various zimini orders.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Kaushik. The law with regard to the impleadment in a representative suit is entirely different. Rules 8 (3) and 8(5) of Order 1 of CPC deals with the addition of the party for impleadment. It cannot be allowed at the mere asking, unless mala fides or recusal is attributed. The contents of the application (Annexure P-9), only reflected of having an interest whereas no documents of *prima facie* nature have been placed on record for impleadment. The trial Court has also not taken into consideration the fact that despite the publication for four years, no body came forward as the application is of 2015. It should have been circumspect in entertaining such application. No zimini orders have been placed on record to establish that the plaintiff, who had earlier instituted the suit, had left the proceedings.

Keeping in view the aforementioned facts, the impugned order, under challenge, is wholly fallacious and infirm and the same is hereby set aside. Resultantly, the revision petition stands allowed.

15.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**