

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 7527 of 2018 (O&M)

Date of Decision: 22.01.2019

Sanjay and another

.....Petitioners

Versus

Parveen and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Surya Kant Gautam, Advocate
for the petitioners.

AVNEESH JHINGAN, J.(oral)

The present civil revision petition has been filed under Article 227 of the Constitution of India, being aggrieved of order dated 5.7.2018 passed by the Civil Judge (Junior Division) Panipat dismissing the application of the petitioners under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') to implead them as defendants.

The facts in brief are that the respondents No. 1 to 3 purchased a share in land of 3 kanals 4 marlas 6 sarsai, out of total joint holding of 7 kanals 17 marlas. They became co-sharer of the property along with the petitioners. The petitioners had given certain portion of the joint property on lease to respondents No. 1 to 3. A suit for permanent injunction was filed by the plaintiffs/respondents No. 1 to 3 (for short 'plaintiff') restraining respondents No. 4 to 6 from interfering in the peaceful possession of the plaintiffs over the property marked in the site plan attached with the suit.

During the pendency of the suit, the petitioners moved an

application under Order 1 Rule 10 CPC for impleading them as defendants.

The said application was dismissed holding that the petitioners are not necessary party. Hence, the present civil revision petition has been filed.

Learned counsel for the petitioners argued that a finding would come in the suit holding that the plaintiffs are in exclusive possession of the property marked in the site plan attached with the suit and that would adversely affect the rights of the petitioners. The contention raised is not well founded. The suit is only with regard to permanent injunction. The title is not to be decided in the said suit. The Court below has taken note of the fact that the suit between the petitioners and the plaintiffs for partition is already pending.

Order 1 Rule 10 CPC reads 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 *bona 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 (XV 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."

As per Order 1 Rule 10 CPC in case the person is found to be necessary for determination of the real matter in dispute, he can be added as party on such terms as the Court thinks just.

In the present case, the petitioners have their own legal remedy to protect their possession against the persons who are not co-sharers. The matter regarding partition is already pending between the co-sharers. Moreover, it has been noted by the learned trial Court that respondent No.4 had admitted the possession of the plaintiff before the Court. Thus, the petitioners are not necessary party in the said suit.

No interference is called for in the impugned order.

The petition is accordingly dismissed.

(AVNEESH JHINGAN)
JUDGE

22.01.2019
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