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

CR No. 8014 of 2017

Date of Decision: 16.07.2019

Mohinder Singh

-Petitioner

Vs

Bakhshish Singh and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Yashjot S. Dhaliwal, Advocate, for
Mr. K.S. Dhaliwal, Advocate,
for the petitioner.

Mr. Atul Jain, Advocate,
for respondent No.1.

Mr. Raman Mohinder Sharma, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has challenged the order dated 16.08.2017 passed by Civil Judge (Junior Division), Patiala vide which application filed by the petitioner under Order 1 Rule 10 CPC for impleading him as party defendant in a suit for separate possession by way of partition was dismissed.

2. Perusal of the record would show that petitioner and father of respondent No.1 namely Jeet Singh were under litigation since long. Petitioner was owner of part of the property. By virtue of sale deed dated 06.11.1989 executed by Rakesh

Kumar being Power of Attorney of the petitioner, title was conferred upon father of respondent No.1. The said sale deed was assailed by the petitioner before the Civil Court. The suit was dismissed on 13.10.1993, however, appeal was allowed by the lower Appellate Court on 27.07.1995.

3. Regular Second Appeal filed by Jeet Singh is pending in the High Court which was once dismissed for non-prosecution, however, application for restoration of the same is pending.

4. Decision of Regular Second Appeal will have direct bearing on the entitlement of the petitioner for being impleaded as party defendant in the subsequent suit.

5. The application has been dismissed solely on the ground that the same was filed at a belated stage. Entitlement of father of respondent No.1 has been increased by virtue of sale deed dated 06.11.1989.

6. If the Regular Second Appeal is ultimately dismissed, the petitioner will get his land back and in such eventuality, he would be a co-sharer in the joint land for which suit for partition is filed by respondent No.1.

7. In any case, the controversy in question cannot be decided in the absence of the petitioner.

8. Earlier litigation was in the knowledge of the plaintiff

as his father unsuccessfully fought before the lower Appellate Court.

9. The plaint in the suit for separate possession by way of partition is conspicuously silent about the earlier litigation. In such eventuality, petitioner has a right to lead evidence in order to establish his case with reference to earlier litigation in the suit.

10. Petitioner is a necessary party and subsequent suit cannot be decided in his absence. There is no stay operating in pending Regular Second Appeal in the High Court.

11. In view of above, this revision petition is allowed. Impugned order dated 16.08.2017 passed by Civil Judge (Junior Division), Patiala is hereby set aside.

12. Normal consequences to follow.

16.07.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |