

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

**CR No.1773 of 2019
Date of Decision: 27.03.2019**

Bhag Singh and another. **...Petitioners**

Versus

Ranjeet Singh and others. **....Respondents**

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. C.M. Munjal, Advocate for the petitioners.

B.S.Walia, J (Oral)

[1] Revision petition has been filed under Article 227 of the Constitution of India, challenging Order dated 18.02.2019 (Annexure P-1), passed by the learned Additional Civil Judge (Senior Division), Jalalabad in Civil Suit No.03/05.01.2016 in case titled as '**Ranjeet Singh and another** versus **Mangal Singh @ Maninder Singh and others**'.

[2] Brief facts of the case leading to the filing of the present petition are that respondent Nos.1 & 2/plaintiffs had filed a suit for a declaration that decree dated 23.08.2013 passed in Civil Suit No.524-I dated 12.12.2007 titled as '**Paramjit Singh and others** versus **Mangal Singh and another**' was null and void on account of the same having been obtained by defendant Nos.2 to 4 i.e. petitioner Nos.1, 2 and proforma respondent No.4 in collusion with defendant No.1 i.e. proforma respondent No.3. Although, the civil suit out of which the revision petition arises bears Civil Suit No.05 of 2016 yet a *suo moto* order was passed by the

learned trial Court on 18.02.2019, that perusal of copy of judgment (Ex. P-12) passed in Civil Suit No.524-I dated 12.12.2007, which had been challenged by way of Civil Suit No.05 of 2016 revealed that Bakshish Singh, who was a party to the decree which had been challenged, had not been impleaded as a party in Civil Suit No.05 of 2016 and in view of it being well settled law that if a party sought a declaration that a decree was null and void then it was incumbent upon him to implead all the parties of that suit. Therefore, in the interest of justice and to ensure proper adjudication for all times to come, Bakshish Singh son of Veer Singh was ordered to be impleaded as defendant in Civil Suit No.05 of 2016.

[3] Learned counsel for the petitioners contended that despite preliminary objection having been taken by the petitioners that the land in dispute was in possession of Bakshish Singh and in the absence of Bakshish Singh son of Veer Singh having been impleaded as party, the suit was bad for mis-joinder and non-joinder of the parties, Bakshish Singh was not impleaded as a party by moving an application by respondent Nos.1 & 2/plaintiffs and it was only on 18.02.2019 that the Court illegally exercised the jurisdiction in passing the impugned order, as despite issue with regard to maintainability having been framed and no application having been moved for impleading Bakshish Singh son of Veer Singh as a defendant, the learned trial Court *suo moto* ordered the impleadment of Bakshish Singh son of Veer Singh as a party defendant.

[4] It was further contended that respondent Nos.1 & 2/plaintiffs had purchased the land in dispute during the pendency of Suit No.524-I dated 12.12.2007 in case titled as '**Paramjit Singh and others** versus

Mangal Singh and another', which was decreed on 23.08.2013 by the then Additional Civil Judge (Senior Division), Jalalabad and in view of respondent Nos.1 & 2/plaintiffs having purchased the suit land during the pendency of the aforementioned civil suit, the principles of *lis pendence* would be applicable and respondent Nos.1 & 2/plaintiffs would be bound by the decree passed in the above said suit.

[5] Undoubtedly, it is the categorical stand of the petitioners that Bakshish Singh was a necessary party to the civil suit filed by respondent Nos.1 & 2 and that in his absence, the suit was bad for non-joinder of necessary parties. Provisions of Order 1 Rule 10 (2) of the CPC are very clear and stipulate that the Court may at any stage of the proceedings either upon or without the application of either parties and on such terms as may appear to the Court to be just order 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 to effectually and completely adjudicate upon and settle all the questions involved in the suit be added as a defendant while Order 1 Rule 10 (4) lays down that where a defendant is added the plaint is to be amended in the manner stipulated therein. Order 1 Rule 10(2) confers a discretion on the Court to add any person as a defendant in a proceeding pending before it at any stage and in doing so and impleading a person as a defendant if it comes to the conclusion that the person not before it is a necessary party then the impleadment of such person can be allowed subject to conditions or such terms as the Court deems fit and proper to impose. No doubt, the Court has the *suo moto* power under Order 1 Rule 10 (2) of the CPC to

CR No.1773 of 2019

implead a person as a defendant where it is of the view that the party being added is a necessary or proper party but needless to mention, it would be open to the person aggrieved against such impleadment to take up objections as may be available to him *qua* the maintainability of the suit against such impleaded person in accordance with law or non maintainability of the suit against the aggrieved person on account of the impleadment of a defendant being barred by limitation, consequently of the suit not being maintainable against the petitioners or against said impleaded party by virtue of the bar of limitation and non-joinder of necessary parties. It would also be open to the petitioners to take up the plea that the suit *qua* the newly added party has been instituted against such newly added party on the date of his impleadment in view of the decision of Hon'ble the Supreme Court in 'Ramalingam Chettiar *versus* P.K. Patabiraman and another', (2001) (4) SCC 96, therefore, the suit against such person and consequently against the petitioners is barred by limitation and is not maintainable in the present form.

Accordingly, in view of the position as noted above, finding no infirmity in the impugned order, the revision petition is ***dismissed***. However, the petitioner/persons aggrieved by the impugned order shall be at liberty to raise any objections/pleas, as are available to them in accordance with law.

(B.S.WALIA)
JUDGE

March 27, 2019

'Rajneesh'

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No