

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

CR-2207-2019 (O&M)

Date of decision: 02.04.2019

Kaushalya

...Petitioner

Versus

Nirmal Chandel and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. I.S. Pabla, Advocate
for the petitioner.

H.S. MADAAN, J. (Oral)

This revision petition is directed against order dated 01.12.2018, passed by Civil Judge (Jr. Divn.), Panchkula, vide which, application under Order 1 Rule 10 CPC filed by the revisionist Kaushlaya, who is defendant in the suit, for impleading Anup Chauhan as defendant No.3 in the main suit has been dismissed

Briefly stated facts of the case are that plaintiff Mrs. Nirmal Chandel has brought a suit for declaration and permanent injunction against defendant Ajay Kumar and Smt. Kaushlaya on the averments that the plaintiff was married with Surinder Pal Singh son of Manphool Singh, however, the couple was not blessed with any child. Sh. Surinder Pal Singh was working as a Professor of History in a college at Aligarh and after his retirement, he had become a Sadhu and started residing in Dehradun. He died on 20.09.2009 without leaving

any Will. In that way, plaintiff being his wife is entitled to inherit estate of Sh. Surinder Pal Singh, deceased. However, the defendant No.1 started claiming that Surinder Pal Singh had executed a registered Will dated 31.08.2012 in his favour. According to the plaintiff such Will is not a genuine document but is a result of forgery and fabrication. Defendant No.1 had managed to get mutation sanctioned on the basis of that Will, as such, the same is also illegal, null and void. On the basis of mutation, defendant No.1 has executed a sale deed with respect to the land measuring 3 kanals and 11 marlas in favour of defendant No.2 Kaushlaya, to which he had no right.

On notice, both the defendants appeared. Defendant No.2 Smt. Kaushlaya moved an application under Order 1 Rule 10 CPC for impleading one Anup Chauhan as defendant No.3 for the reason that defendant No.1 has executed a registered gift deed bearing No.2694 dated 30.11.2015 in favour of Anup Chauhan with respect to some land situated within the revenue estate of Village Bhogpur, Nagar Nigam, Panchkula and mutation has also been sanctioned on the basis thereof. In that way, Anup Chauhan is a necessary party for just and proper decision of the case. That application was resisted by respondent/plaintiff.

After hearing arguments, the trial Court dismissed the application, observing that the controversy is between the plaintiff and defendants and that in the application, the applicant has taken mutually

contradictory stand in as much as at one place, stating that some of the property out of the suit property was gifted by defendant No.1 in favour of Anup Chauhan and at another place, stating that Anup Chauhan had purchased the land from defendant No.1. Referring to the case law, the trial Court has come to the conclusion that Anup Chauhan is neither a necessary party nor a proper party and in his absence, the controversy can be effectively decided. This order left the petitioner aggrieved and she has approached this Court, by way of filing the present revision petition.

I have heard learned counsel for the petitioner besides going through the record and I find that there is absolutely no merit in the petition. Plaintiff is dominus litus of the suit and its for her to decide as to who is to be impleaded as defendant. In this case, things might have been different, if, plaintiff had moved such application for impleading Anup Chauhan as a party, being transferee of defendant No.1 or for that matter, if Anup Chauhan had moved an application for being impleaded as a defendant for the reason that he had an interest in part of the suit land being transferee of defendant No.1. Defendant Kaushlaya has no locus standi to move such type of application. Her application was rightly rejected by the trial Court. If, ultimately, it is found that Anup Chauhan was a necessary party, then, that may adversely affect the case of the plaintiff and the suit may be dismissed for non-joinder of the necessary parties. But such type of application at the instance of defendant can certainly be not allowed.

Counsel for the petitioner has referred to two authorities title Smt. Vidya Devi Vs. Shruti Choudhry and others, 2009(5) RCR (Civil) 751 and Gram Panchayat Garhi Vs. Dharambir, 1998 (2) RCR (Civil) 98. However, those are not applicable due to different facts and circumstances as well as the context in which such observations had been made. Thus, finding no merit in the revision petition, the same stands dismissed.

02.04.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No