

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

CR No.5143 of 2019 (O&M)

Date of Decision:05.09.2019

Gowardhan Mining & Minerals Company

..Petitioner

Versus

Smt. Saroj

..Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. K.S.Khehar, Advocate for
Mr. Sumit Sangwan, Advocate
for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 14.08.2019 passed by the Additional Civil Judge (Senior Division), Tosham (for short-the Trial Court) through which the petitioner's application filed under Order 7 Rule 11 CPC has been dismissed and by exercising powers under Order 1 Rule 10 (2) CPC the Trial Court has permitted change in the memo of parties in the respondent's suit.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein to restrain the petitioner from illegally plying its vehicles over the respondent's agricultural land which was detailed and described in the head note of the plaint (for short-the suit property).

On being put to notice, the petitioner appeared before the Trial

Court and filed an application under Order 7 Rule 11 CPC seeking therein rejection of the respondent's plaint on the ground that the respondent had filed her suit against Gowardhan Mining & Minerals Company which was not in existence as the petitioner/defendant was M/s Gowardhan Mining & Minerals Partnership Firm.

On being served a copy of the petitioner's aforesaid application, the respondent realised her mistake and filed an application under Order 6 Rule 17 CPC seeking therein to amend the cause title of her suit to the effect that the defendant's name mentioned therein as Gowardhan Mining & Minerals Company be amended to M/s Gowardhan Mining & Minerals Partnership Firm. Notice of the respondent's application was issued to the petitioner who filed a reply thereto through which it was not denied that the respondent had wrongly arrayed M/s Gowardhan Mining & Minerals Company as a defendant in her suit.

Since the issues raised in the aforesaid applications filed by the parties were inter-connected, the Trial Court took up both the applications together and decided the same through a common order dated 14.08.2019 through which while exercising its power under Order 1 Rule 10 (2) CPC the Trial Court permitted change in the memo of parties in the cause title of the respondent's suit only to the effect that instead of M/s Gowardhan Mining & Minerals Company the name of the defendant be read as M/s Gowardhan Mining & Minerals Partnership Firm. So far as the petitioner's application filed by it under Order 7 Rule 11 CPC was concerned, the same was dismissed. Such order of the Trial Court is under challenge in the present proceedings.

Learned counsel for the petitioner submitted that in reply to the petitioner's application filed by it under Order 7 Rule 11 CPC, the respondent had admitted that she had filed her suit against a non-existent party and therefore her plaint was liable to be rejected. It was further submitted that the Trial Court could not have exercised its *suo moto* power under Order 1 Rule 10 (2) CPC to permit amendment in the memo of parties of the respondent's suit.

The respondent filed a suit seeking therein to injunct a mining firm from illegally plying its vehicles over the suit property to reach the hills, which were adjacent to the suit property, for which the petitioner mining firm had got mining rights. Though, the arrayed defendant was Gowardhan Mining & Minerals Company, on service of summons M/s Gowardhan Mining & Minerals Partnership Firm appeared before the Trial Court thus virtually admitting that it was the partnership firm which was the affected and actual defendant against whom the respondent had intended to file her suit.

In the proceedings which ensued before the Trial Court M/s Gowardhan Mining & Minerals Partnership Firm did not deny that the mining rights in the hills adjacent to the suit property had been given to them. The only issue raised by them was that the arrayed defendant was Gowardhan Mining & Minerals Company whereas the name of the firm was M/s Gowardhan Mining & Minerals Partnership Firm.

In the light of the above, the Trial Court, while exercising its *suo moto* powers under Order 1 Rule 10 (2) CPC is rightly found to have ordered a change in the cause title/ array of parties in the respondent's suit

as a result of which the actual and real defendant has been ordered to be impleaded. No error in the impugned order is found as in the interest of justice only a mistake has ordered to be corrected and that too at the initial stage of the suit. Resultantly, the petitioner's application filed under Order 7 Rule 11 CPC is also found to have been rightly dismissed by the Trial Court.

Dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

September 05, 2019

Jyoti-1 Whether speaking/reasoned Yes/No Whether Reportable Yes/No