

S.No.241

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

CR No.4866 of 2017

Date of Decision:04.03.2020

Gurnam Singh and others

.....Petitioners

Vs.

Hakam Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Tarun Dhingra, Advocate for the petitioners.

Mr. Rajender Kumar, Advocate for respondent No.1.

Mr. Mayur Karkra, Advocate for Mr. Aman Pal, Advocate
for respondents No.2 to 4.

Rajbir Sehrawat, J.(Oral)

This is a petition under Article 227 of Constitution of India, challenging order dated 06.07.2017 passed by the trial Court; whereby; the application filed by respondents No.2 to 4 in the present petition, under Order 1 Rule 10 CPC has been allowed and they have been permitted to be impleaded as defendants in the suit.

Bereft off unnecessary details, suffice it to mention that the suit has been filed by the petitioners seeking a mandatory injunction directing the defendant/ respondent No.1 herein and his family members; to close their door which is opening on the street which is claimed by the petitioner/plaintiffs to be their exclusive street; and further a prayer has also been made that the defendants be restrained from interfering in peaceful usage of the said street by the plaintiffs by way of construction of a channel for discharging waste water or through any other mode like opening the door and windows on the said passage. In this suit, the claim of the plaintiffs is that this street is under their private ownership, whereas, the

defendants have claimed that the street in question is a public passage. They have rightly opened the door in the said street. They have been using the same for outgress and ingress to their property.

In this suit, an application was filed by respondents No.2 to 4, for being impleaded as defendants in the suit; claiming that their property is also situated on the same street. Any injunction restricting the use of the said street; exclusively to the plaintiff/ petitioners; would prejudice their right to use the said street as a public passage. This application has been allowed by the trial Court. Hence, the present petition has been filed by the plaintiff/ petitioners challenging the said order.

Arguing the case, learned counsel for the petitioners has submitted that the petitioners, being plaintiffs are the master of the suit. Therefore, it is for them to choose as to whom they want to implead as a defendant in the suit. Still further, it is submitted that the petitioners have claimed relief only against the original defendant. No relief has been sought against the respondents added defendants. Therefore, the added defendants are neither necessary nor proper parties to the suit. To buttress his assertion that any person should not be added as a defendant in the suit, against the wishes of plaintiff, learned counsel for the petitioners has relied upon judgments of this Court in **Kamla Devi and others v. Surinder Kumar and others, 2006(4) R.C.R. (Civil) 780, Balbir Singh v. Kailash Chander and another, 2013(46) R.C.R. (Civil) 430** and **Pritam Singh v. Manmohan Singh and others, 2017(2) PLR 351.** Still further, it is submitted that if the added defendants have any grievance, they are free to file a separate suit. Hence, the trial Court has wrongly passed the impugned

order.

On the other hand, learned counsel appearing for respondents No.2 to 4/ added defendants; has submitted that the street in question is a common passage. Their property is also situated on the same street. It is also submitted that besides this street, the added defendants do not have any other passage to their property. Hence, any injunction in favour of the plaintiff/petitioners, granting them the exclusive right to use the street as per their choice; is definitely going to encroach upon their rights to use the said street as a public passage.

Having heard the learned counsel for the parties, this Court does not find any substance in the argument of the learned counsel for the petitioners. Although learned counsel for the petitioners has relied upon the judgments mentioned above, however, the said judgments are totally distinguishable on the facts of the present case. The distinguishing feature in the present case is that, admittedly, the suit pertains to a passage/street, which the petitioners claim to be their exclusive street, whereas, the original defendant and the added defendants; both; are claiming the said street to be a public passage. Although the said question is a matter to be decided by the trial Court on the evidence to be led in the suit, however, the fact remains that the dispute pertains to a passage. Any judgment, passed by the trial Court regarding passage can turn out to be a judgment in rem also; if the trial Court holds that the said passage is not a private property. Therefore, if the added defendants have claimed their property to be situated on the said street, then no mistake can be attributed to the order passed by the trial Court in permitting them also to be added as the defendants.

Even the prayer made by the petitioners in the suit is of the nature of getting exclusive rights over the suit property.

In view of the above situation, if the suit property itself is stated to be a passage, of any nomenclature or kind, then any person having property abutting to the suit land has a right to dispute the attempt of the plaintiffs and to show the same to be a public street, and any such person has to be taken as a proper party for final adjudication of the suit as such. Hence, this Court does not find any illegality or irregularity with the order passed by the Court below.

In view of the above, finding no merit in the present petition, the same is dismissed.

March 04, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No