

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5458 of 2016 (O&M)
Date of decision : 13.01.2020

Gurmeet Kaur

....Petitioner

Versus

Mukhtiar Singh and others

....Respondents

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

Present: Mrs. Rupinder K. Thind, Advocate for the petitioner.

None for respondent Nos.1 and 2.

B.S. Walia, J.

1. Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside order Annexure P/1 dated 06.05.2016 dismissing the application filed by the petitioner under Order 1 Rule 10 CPC.

2. Brief facts of the case leading to the filing of the revision petition are that respondent Nos.1 and 2 / plaintiffs filed a civil suit against respondent Nos.3 to 5 for a declaration that they were entitled to get mutations sanctioned on the basis of sale deeds dated 15.01.1962 and 11.05.1964 regarding land measuring 3 kanals 11 marlas bearing Khasra No.79/5/3 and land measuring 1 kanal 18 marlas bearing Khasra No.78/1/2 situated in the revenue estate of Makhanwindi, Tehsil and Distt. Amritsar with consequential relief of permanent injunction, inter alia, for restraining respondent No.5 i.e. defendant No.3 from interfering / intermeddling and / or dispossessing the plaintiffs from the land mentioned above forcibly and illegally himself or through his agents etc.

3. An application under Order 1 Rule 10 read with Section 151 CPC was filed by the petitioner-applicant for impleading her as defendant No.4 on the ground that land bearing Khasra No.78//1/2 measuring 1 kanal 18 marlas situated in village

Makhanwindi, Tehsil and Distt. Amritsar was owned and possessed by her being co-sharer and that respondent Nos.1 and 2/plaintiffs had intentionally and with malafide intention not impleaded her as defendant in order to defraud her despite her being owner in possession of the aforementioned land, therefore, she was an interested party and having interest in the subject matter of the suit, accordingly she was a proper and necessary party in the suit etc.

4. Learned trial Court vide order Annexure P/1 held that copy of judgment dated 10.08.2015 passed by the learned Civil Judge (Jr. Division), Amritsar showed that respondent Nos.1 and 2/plaintiffs had filed a suit for permanent injunction against the petitioner and that although in the said case, it was held that the petitioner was co-sharer but it was not held that she was in possession of the suit property whereas the instant civil suit had been filed for declaration that the plaintiffs were owner in possession with a prayer for permanent injunction for restraining respondent No.5 / defendant No.3 from interfering or dispossessing the plaintiffs from the suit property. The learned trial Court held that it was threat to the plaintiffs which led them to file the suit and they were the best persons to plead from whom they were under threat of dispossession therefore, the petitioner-applicant was not a necessary party because in a suit for permanent injunction, it was the plaintiffs who could tell from whom they were under threat and the applicant could not become a party to the suit as she was not a necessary party. Accordingly, the application was dismissed.

5. Learned counsel contended that the impugned order referred to the suit as a suit simplicitor for permanent injunction oblivious of the facts that the suit was for declaration to the effect that the plaintiffs were entitled to get the mutation sanctioned on the basis of sale deeds dated 15.01.1962 and 11.05.1964 regarding land measuring 3 kanal 11 marla bearing khasra No.79/5/3 and land measuring 1 kanal 18 marla bearing khasra No.78/1/2 situated in the revenue estate of

Makhanwindi, Tehsil and Distt. Amritsar with consequential relief of permanent injunction, inter alia, restraining respondent No.5/defendant No.3 from interfering / intermeddling and/or dispossessing the plaintiffs from the aforementioned land forcibly and illegally himself or through his agents etc. Learned counsel further contended that respondent Nos.1 and 2/plaintiffs had also filed a suit for permanent injunction against the petitioner praying for restraining her from interfering or dispossessing them from land measuring 1 kanal 18 marlas situated in Killa No.78/1/2 which was part of the suit land in the present suit but the said suit was dismissed by the learned Civil Judge (Jr. Division), Amritsar vide judgment Annexure P/4 dated 10.08.2015 by observing that there was no reason to disbelieve that defendant therein i.e. the petitioner herein was a co-sharer in the suit property and there was no reference with regard to entry of plaintiffs therein i.e. respondent Nos.1 and 2 herein also in the jamabandi. Accordingly, the suit filed by respondent Nos.1 and 2 for the relief of permanent injunction was dismissed.

6. Learned counsel contended that one of the relief claimed by respondent Nos.1 and 2/plaintiffs in the instant suit was that they were owner in possession of land measuring 1 kanal 18 marla bearing khasra No.78/1/2 and the petitioner was recorded as a co-sharer in the revenue record i.e. jamabandi for the year 2009-10, therefore, the learned trial Court could not decide the question of ownership without impleading the petitioner whose name was entered in the revenue record as co-sharer of the suit land and that the aforementioned aspect of the matter has not been considered by the learned trial Court. Learned counsel for the petitioner has relied upon the decision of a Coordinate Bench of this Court in **B.P Dhandha Versus Ram Saran Bhatia 2002(1) PLJ 106** to contend that co-owner has a right to defend his property and in the absence of co-sharer, no decree can be passed. Relevant extract of the aforementioned decision is reproduced as

under:

*“ 4. I have carefully gone through the impugned order and the averments contained in the application under Order 1 Rule 10, particularly the sale deeds set up by the applicant that he had purchased the plot. He being a co-owner has got a right to defend his property. In the absence of a co-sharer, no decree can be passed. In fact, for the purpose of determining the real controversy between the parties, the presence of the petitioner is not only essential but he is a proper and necessary party. Even a bona fide purchaser of the property during the pendency of the litigation becomes owner of such property and is entitled to be heard before any order is passed affecting his vital interest in the property as held in **Jagmail Singh v. Amarjit Kaur, 2000(1) RCR(Civil) 423.** Reliance is also placed on ***Savitri Devi v. District Judge, Gorakhpur and others, (1999)2 SCC 577.***”*

7. Learned counsel has also relied upon decision of a Coordinate Bench of this Court in **Jagjit Singh Versus Charanjit Singh and another 2014(3) R.C.R.(Civil) 40** to contend that a person would be a proper party whose presence would enable the trial Court to completely, effectively and properly adjudicate upon all matters and issues though he may not be a person in favour of or against whom a decree was to be made.

8. I have considered the submissions of learned counsel. In the instant case, the relief sought for in the civil suit reveals a declaration having been sought by respondent Nos.1 and 2 / plaintiffs that they were entitled to get the mutation sanctioned on the basis of sale deeds dated 15.01.1962 and 11.05.1964 regarding land as per details given above which included the suit land and in which respondent Nos. 1 and 2 had filed a civil suit for permanent injunction and the learned Civil Judge (Jr. Division), Amritsar had been pleased to hold the defendant therein i.e. petitioner herein to be a co-sharer in the suit property. Once that be so,

then in that situation the petitioner is a necessary party and entitled to be impleaded as such.

9. Accordingly, in the light of the position as also the decisions referred to above, the impugned order is set aside. The petitioner is impleaded as a defendant in the civil suit. Learned trial court shall grant opportunity to the petitioner to file written statement where after proceedings be taken out in accordance with law for the decision of the civil suit.

January 13, 2020
ps

(B.S. Walia)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No