

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5787 of 2018 (O&M)
Date of Decision : 05.02.2020

Bimlesh ...Petitioner

Versus

Bed Ram and others ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Johan Kumar, Advocate
for respondent Nos.1 to 6.

ALKA SARIN, J

1. The present revision petition has been filed against the order dated 14.08.2018, whereby the application filed by the respondents for being impleaded as a party in the suit has been allowed.

2. Brief factual matrix of the case is that the plaintiff/petitioner along with the plaintiff-respondent Nos.8 and 9 has filed a suit for declaration to the effect that they are the only legal heirs of deceased-Hema Ram and that the mutation of inheritance is liable to be entered and sanctioned in their favour. The said suit was filed against the general public. The respondent Nos.1 to 6 herein filed an application under Order 1 Rule 10 read with Section 151 CPC for being impleaded as defendants in the suit. It was stated in the application that the plaintiffs had wrongly shown themselves as legal heirs of deceased-Hema Ram and that they were actually not related to Hema Ram in any way. It was further stated in the application that the applicants are tenants in possession over the suit

land for the last many years and further that the plaintiffs had wrongly got mutation No.1494 qua inheritance of Hema Ram sanctioned in their favour which was later cancelled and the entry of mutation was reverted in the name of Hema Ram. It was also stated in the application that an FIR had been registered against the plaintiffs and the plaintiffs are not joining investigation in that case. The application was contested by the plaintiffs. Vide order dated 14.08.2018, the trial Court allowed the application under Order 1 Rule 10 CPC and impleaded the respondent Nos.1 to 6 herein as defendants. Aggrieved by the said order, the present revision petition has been preferred.

3. I have heard the learned counsel for the parties. It is been contended by the counsel for the petitioner that the respondent Nos.1 to 6 ought not to have been impleaded as a party inasmuch as they are not necessary to effectually and completely adjudicate and settle all points involved in the suit. It is further contended that the said respondents do not have any direct interest in the subject matter and hence ought not to have been impleaded as a party. In support of his arguments, the learned counsel has relied upon the following judgments :-

1. *Mrs. Prabha Bhasin versus State (Delhi)*, 1989(2) HLR 355
2. *Surjit Kaur versus Chand Singh (P&H)*, 1984(1) RCR (Criminal) 464
3. *Vinod Kumar versus Neelam Chhabra (P&H)*, 2015(1) RCR (Rent) 594
4. *Baijnath versus State of M.P. & others*, 1972 M.P.L.J. 11
5. *Razia Begum versus Sahebzadi Anwar Begum and others*, 1958 AIR (SC) 886
6. *Bikali Charan Das versus Sashimani Das and others (Orissa)*, 2011 AIR (Orissa) 74

4. Per contra the counsel for the respondent Nos.1 to 6 has contended that they are a necessary party inasmuch as the plaintiffs are trying to grab the property of Hema Ram and they are the only ones who will be able to bring the correct facts to the notice of the Court. It is further contended that the plaintiffs had concealed the fact that the earlier mutation No.1494 sanctioned in their favour qua inheritance of Hema Ram had been subsequently cancelled and the entry was reverted in the name of Hema Ram. The counsel further submitted that an FIR had also been registered against the plaintiffs and they were not joining investigation. That being so, the presence of the respondent Nos.1 to 6 was necessary for adjudication of the case.

5. Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 (hereinafter to be referred as CPC) reads as under:-

(2) Court may strike out or add parties-The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and 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 effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

6. As per the above reproduced provision, the Court may add any party whose presence may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involving in the suit.

7. In the present case, the suit has been filed against the general public and it is only the respondent Nos.1 to 6 who have come forward for being impleaded as a party and brought on record a certain facts which could not have come to the notice of the Court otherwise. The present suit having been filed against the general public, the said respondents would have every right to contest the suit even otherwise. It is trite that plaintiff is *Dominus Litus* of the case and he cannot be forced to fight litigation against any third person. However, in the present case, the plaintiffs filed a suit against the general public and the respondent Nos.1 to 6 being a member of the general public has every right to contest the suit. In any case, the facts brought to the notice of the Court by way of the application under Order 1 Rule 10 CPC would aid the Court in arriving at a conclusion and to effectually and completely adjudicate upon and settle all questions involved in the suit. There is no quarrel with the proposition of law that the persons sought to be impleaded should have direct interest in the matter. The Hon'ble Supreme Court in the case of *Razia Begum (supra)* held as under :-

“13. As a result of these considerations, we have arrived at the following conclusions :

(1) That the question of addition of parties under Rule 10 Order 1 of the Civil Procedure Code, is generally not one of initial jurisdiction of the court, but of judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in

the limiter sense in which it is used in Section 115 of the Code;

- (2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;
- (3) Where the subject-matter of the litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy;
- (4) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Sections 42 and 43 of the Specific Relief Act;
- (5) In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;
- (6) The result of a declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that considerations, the rule of 'present interest', as evolved by case law relating to disputes about property does not apply with full force; and
- (7) The rule laid down in Section 43 of the Specific Relief Act, is not exactly a rule of res judicata. It is narrower in one sense and wider in another."

8. In the present case too, which is for declaration, the rule of direct interest ought to be relaxed, since by allowing the respondent Nos.1 to 6 to be added the Court would be in a better position to effectually and completely adjudicate upon the controversy.

9. In view of the law laid down by the Hon'ble Supreme Court as well as the facts of the present case, the presence of the respondent Nos.1 to 6 in my considered view, would be necessary for the Court to completely and effectively adjudicate upon the matter.

10. In view of the above, I do not find any merit in the present revision petition, hence, the same is dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

05.02.2020
Manpreet