

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1472-2020 (O&M)

Date of Decision: 03.03.2020

Baldev Singh (died) through LRs

... Petitioner

Versus

Darshan Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Surjit Singh Salar, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

1. Heard.
2. Petitioner is the plaintiff in the suit. He laments that by the impugned order his candle has been burnt at both ends. He says that at the stage of rebuttal and arguments in the suit, the petitioner filed an application under Order 1 Rule 10 CPC for impleading four of his co-sharers, who had not been impleaded in the suit, namely, Charanjit Kaur, Sinder Kaur, Karnail Singh and Amrik Singh sons and daughters of Gurdial Kaur, who are with him co-sharers in joint Khewat. That application has been dismissed against which an appeal is pending. In the appeal before the District Judge, Sangrur to overcome his situation, he was advised to move an application under Order 23 Rule 1&2 CPC to withdraw the suit itself. That request has been dismissed, while keeping the suit pending. Leave has been refused for the reason that plaintiff cannot be allowed to fill in lacunas in the suit proceedings at a belated stage by introducing persons who are not

party to the main suit. This situation would invite a fresh trial even when there were 32 private defendants, other than defendants No. 31 & 32 which are Banks. I cannot say that the order of the Appellate Court suffers from any infirmity and, therefore, interference in this case is warranted. However, since the main appeal is pending and one of the grounds is the dismissal of the application under Order 1 Rule 10 CPC, it may be worth noticing that with the dismissal of the application under Order 1 Rule 10 CPC the suit itself was dismissed inter alia for want of impleading necessary parties of persons who were sought to be impleaded as the additional defendants.

3. In view of these facts and circumstances, I have no doubt when the matter is taken up for hearing by the Appellate Court, he would consider the propriety and the correctness of the order passed under Order 1 Rule 10 CPC even though it has merged with the judgment and decree of the trial court. What I mean to say is that the learned Judge in first appeal would weigh the scales of justice as both he and this Court is faced with a situation that in case of dismissal of the appeal, the petitioner may not have his rights in the suit determined on merits and that is a somewhat serious matter for justice according to law.

4. With these observations this petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

03.03.2020

Satyawan

Whether speaking/reasoned Yes

Whether reportable Yes/No