

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

-.-

Civil Revision 7564 of 2019 (O&M)

Date of decision: 27.02.2020

Premwati alias Safedi

.....*Petitioner*

Versus

Mahesh and another

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Ravi Malik, Advocate for
Mr. S K Panwar, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

Challenge in the present petition has been directed against order dated 30.09.2019 (Annexure P4) passed by the Additional Civil Judge (Senior Division), Palwal, whereby application filed by the petitioner under Order I Rule 10 read with Section 151 of the Code of Civil Procedure (in short, 'the Code') for impleadment as party, has been dismissed.

Mahesh-respondent has filed a petition under Section 8 of the Hindu Minority and Guardianship Act (for short 'the Act') for permission to sell the share of minors namely Manjeet aged 16 years and Sachin 14 years sons of late Smt. Poonam wife of Mahesh. The petitioner filed the instant application with the allegations that suit for declaration regarding the suit property is pending in the Court and as such, right of the petitioner is involved, therefore, she is required to be impleaded as party.

Counsel for the petitioner, in line, with the averments raised in the application would argue that since dispute with regard to ownership of property in question is pending before the civil Court in suit for declaration filed by the petitioner, she is required to be impleaded as party in the petition seeking permission to sell share of minors.

Order 1 Rule 10 (2) of the Code deals with 'Court may strike out or add parties'. A relevant extract therefrom reads as follows:-

(2) 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."

Counsel for the petitioner has failed to advance any meaningful and convincing arguments as to how presence of the petitioner is required to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the petition filed under Section 8 of the Act seeking permission to sell share of minors. Indisputably, in the aforesaid petition, the respondent has not claimed any relief against the petitioner. This apart, the petitioner has already instituted a suit raising dispute with regard to suit land and she is always at liberty to file an application for stay

of alienation of that property. Even otherwise, alienation of property, subject matter of the suit filed by the petitioner, would be hit by *principle of lis pendens*. In this view of the matter, I find myself unable to accept contention of the petitioner that she is either a necessary or proper party to be impleaded in the aforesaid petition against the wish of respondent who is *dominus litus*.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed *in limine*.

(Rekha Mittal)
Judge

27.02.2020
Mohan Bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No