

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

**CR-643 of 2021 (O&M)
DATE OF DECISION : 17.03.2021**

Birender **...Petitioner**

Versus

Laxmi Narayan & Ors. **...Respondents**

With **CR-652 of 2021 (O&M)**

Birender **...Petitioner**

Versus

Ajit & Ors. **...Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gopal Sharma, Advocate
for the petitioner.

ARUN MONGA, J.

1. Petitioner is defendant No.1 in the suit originally filed by respondent Smt. Devi Sharma and Laxmi Narayan. The suit was filed for permanent and mandatory injunction in the representative capacity for causing public nuisance.

2. It was alleged that defendants are wrongly shown owner of half share of disputed land falling in Khewat No. 232, Khatoni No.319, Mustatil No.21, Khasra No.96(0-12) situated at village Khandora, Tehsil Bawal, District Rewari, on which a Dharamshala and temple are being constructed. On the basis of wrong entries, the defendants are trying to take forcible possession of the land in dispute, apart from changing its nature and claim was that they be restrained from doing so.

2. During pendency of the suit, plaintiff No.1 Smt. Devi Sharma vide application dated 25.01.2016 sought permission to withdraw the suit on her behalf, which was granted by the trial Court on the same date.
3. On 09.02.2016, petitioner/ defendant No.1 filed an application for rejection of the plaint, *inter alia*, on the ground that plaintiff No.2 is stranger to the suit property and hence suit filed by him is not maintainable. Plaintiff No.2 objected to the application by filing a reply.
4. Before the application, *ibid*, could be decided, on 23.09.2016, an application under Order 1 Rule 10 CPC was filed by Ajit (respondent No.1 in CR-652 of 2021) seeking his impleadment in the suit.
5. Though, prayer was opposed, however, the learned trial Court vide order dated 21.01.2021 permitted Ajit to become party-plaintiff in the suit. Vide separate order of even date, the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed. Aggrieved, petitioner Birender has filed CR No. 643 of 2021 challenging dismissal of his application under Order 7 Rule 11 CPC. By filing CR No. 652 of 2021 order dated 21.01.2021 permitting Ajit to be impleaded as plaintiff, has been impugned by defendant Birender.
6. Learned counsel for the petitioner argues that the Court below has erred in allowing Ajit, who is son of plaintiff No.2 to be impleaded as plaintiff in the suit. According to him, Ajit is neither necessary nor proper party to the suit. He further submits that the trial Court ought not to have permitted him to be impleaded as plaintiff. Once he is not permitted to be pleaded as plaintiff, representative suit by solitary plaintiff No.2 is not maintainable in view of provisions contained in Section 91(1)(b) of the CPC.

7. Having heard learned counsel for the petitioner and on going through the impugned orders, I am of the opinion that no interference is warranted by this Court in exercise of revisional jurisdiction.

8. The impugned order dated 21.01.2021 passed by the trial Court permitting Ajit to be impleaded as plaintiff, is based on the following reasoning:-

“Heard the arguments of the parties. Perusal of case file reveals that the plaintiffs had filed the present suit claiming that the suit property which is comprised in mustatil No.21, Khasra No.96(0-12) was given to the ancestors of the parties to the suit by Prabhu Dayal in a gift subject to the condition that a Dharamshala would be constructed on the suit property. Accordingly, in the year 1984 a Dharamshala and a temple were constructed on the suit property but now the respondent having bad intention wants to get the possession of the half share of the suit property. The plaintiff no.1 vide her application had withdrawn the present suit. Now the applicant Ajit wants to get himself impleaded as plaintiff as he has a common interest and title with the plaintiff No.2. The applicant has alleged that the present suit has been filed in the representative capacity under section 91 of CPC. In view of the facts and circumstances of the case, the applicant is hereby permitted to be impleaded as a plaintiff. Accordingly, the application stands allowed and plaintiff is directed to file the amended title in the case.”

9. A necessary party is, as has been stated in Order 1 Rule 10 CPC itself, a party whose addition is absolutely necessary in order to enable the Court to adjudicate effectually and completely on the matter in controversy between the parties. It is apparent that applicant Ajit is the son of plaintiff No.2 Laxmi Narayan. He is sharing common interest and title with his father in the suit property. In the circumstances, it cannot be said that Ajit is not a necessary and proper party to the suit and that the trial Court erred in permitting him to be impleaded as plaintiff.

10. The next plank of argument of learned counsel for the petitioner in CR No. 643 of 2021 is based on the fact that after the withdrawal of suit

by plaintiff No.1, the suit by solitary plaintiff No.2 is not maintainable in view of provision contained in Section 91(b) of the CPC which specifically envisages that the suit for declaration and injunction or for such other relief qua public nuisance or other wrongful act affecting or likely to affect the public, has to be instituted by two or more persons. Hence, application filed under Order 7 Rule 11 CPC ought to have been allowed by the trial Court.

11. Section 91 of CPC deals with Public nuisance and other wrongful acts affecting the public and provides as under:-

(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted:-

(a) by the Advocate General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

12. It is apparent that as per law, the suit has to be filed by the Advocate General or two or more persons with the leave of the Court. These provisions are not akin to the provisions contained in Order 1 Rule 10 CPC as under Section 91 suit can be filed by two or more persons irrespective of the fact that no special damage has been caused to such persons by reason of such public nuisance or other wrongful act. Meaning thereby, whether or not such persons are directly and substantially affected by special damage caused by public nuisance or other wrongful act, they can institute the proceedings qua such public nuisance or wrongful act.

13. The argument qua maintainability of the suit on account of solitary plaintiff is no more available to petitioner as Ajit has already been

impleaded as one of the plaintiffs in the suit. As observed aforesaid, his impleadment in the suit cannot be interfered with.

14. The underlying object of Order 7 Rule 11 CPC is that if no cause of action is disclosed in the plaint or if the suit is barred by limitation, the court would not permit protraction of the proceedings. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. Entire purpose of conferment of such powers under O7 R 11 is to ensure that a litigation, which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the courts, and exercise the mind of the respondent. The determining test is whether the plaint discloses a cause of action if read in conjunction with the documents relied upon. It is equally settled that while making such a determination, courts would have to disregard the pleas taken by the defendant in the written statement and the courts should restrict itself to the plaint and should not go into the detailed facts as provided under the written statement or even the application filed under O7 R 11, which is not the situation in the case in hand. It has rightly been observed by the trial Court that both the parties are staking their right on the suit property and their pleas are matter of evidence to be appreciated at a later stage.

15. As an upshot of the discussion, no fault could be found with the approach adopted by the Court below. Both revision petitions are dismissed.

March 17, 2021
Jiten

(ARUN MONGA)
JUDGE

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