

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

CR No.3415 of 2021(O&M)
Date of Decision: 23.12.2021

Chamkaur Singh (since deceased) through his LR

-Petitioner

Versus

Gian Kaur and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jaideep Verma, Advocate,
for the petitioner.

Mr. Aayush Gupta, Advocate
for the caveators/respondents No.2 to 6.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has preferred this petition against the order dated 03.12.2021 passed by the Additional District Judge in Civil Appeal(s) No.1124 of 2016 titled Gian Kaur Vs. Chamkaur Singh and others.

Vide the aforesaid order, an application filed by the petitioner/defendant No.1 under Order 1 Rule 10 read with Order 22 Rule 4 CPC was dismissed.

Learned counsel for the caveators/respondents No.2 to 6 apprised this Court that the suit of the plaintiff/respondent No.1 was dismissed by the trial Court, in which, defendant

No.1/predecessor-in-interest of the petitioner(s) was proceeded against ex parte. The appeal was preferred by the plaintiff before the Lower Appellate Court with the recital that legal heirs of defendant No.1 Chamkaur Singh were not impleaded as no relief was sought against her. Initially, application was filed by the plaintiff for impleading Jatinder Kaur as party respondent on 20.07.2019. The said application was got disposed of on the ground that application filed by Jatinder Kaur for being impleaded was pending.

The application filed by the petitioner for being impleaded herself as party respondent before the Lower Appellate Court was dismissed.

One of the prayers before the Lower Appellate Court was that the appeal be remanded back to the trial Court for decision afresh.

Learned counsel for the caveators/respondents No.2 to 6 submits that the aforesaid stand is on account of collusion between the plaintiff and LR of defendant No.1. Once no relief was claimed against the petitioner/proposed respondent in the appeal, therefore, the petitioner is not necessary much less proper party in the appeal.

During course of arguments, learned counsel for the caveators/respondents No.2 to 6 submits that the caveators

would be having no objection in case, the petitioner does not press her plea for remanding the case back to the trial Court.

At first instance, learned counsel for the petitioner was agreeing to the aforesaid proposal, but on instructions, he refused to accept the same.

The predecessor-in-interest of the petitioner was proceeded against ex parte before the trial Court and decree was passed against the dead person. In the appeal preferred by the plaintiff, there is a specific recital at the top of the grounds of appeal that no relief is being claimed against the LR of defendant No.1, therefore, in the appeal filed by the plaintiff, LR of defendant No.1 has no locus to ask for remand of the case. Though application under Order 1 Rule 10 CPC is maintainable before the Lower Appellate Court, but the controversy is not such, which would require interference by this Court in view of overall assessment of the Court.

Dismissed.

23.12.2021
Prince

(RAJ MOHAN SINGH)
JUDGE

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