

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

**CR-9086-2017 (O&M)
Decided on:-17.11.2022**

Kaushalya Devi and others

....Petitioners

vs.

Pardeep Kumar Sachdeva

....Respondent.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Priyanshu Kamra, Advocate,
for the petitioners.

Despite service, no one appears on behalf of the respondent.

HARKESH MANUJA J. (Oral)

In the present revision petition, challenge has been made to an order dated 03.10.2011 passed by the learned Additional Civil Judge, Abohar, whereby an application filed under Order 1 Rule 10 CPC, at the instance of the petitioners-plaintiff, so as to implead one Nirmala Sachdeva as defendant No.2, has been dismissed.

Facts leading to the present case are that the petitioners-plaintiffs, claiming themselves to be successors of Piara Singh son of Prem Singh, filed a suit for possession as well as permanent injunction regarding Shop No.44 in Rani Jhansi Market, District Fazilka against respondent-defendant. The suit was filed on 02.01.2014 and the same was contested by respondent-defendant through written statement filed on 09.05.2014. Respondent-defendant disclosed in the written statement that his wife, namely, Nirmala Sachdeva was the owner in possession of the suit property.

While the evidence of the petitioners-plaintiffs was being

recorded, an application was filed at their instance invoking Order 1 Rule 10 CPC for impleading Nirmala Sachdeva as defendant No.2. The aforesaid application was opposed by the respondent-defendant on the ground of delay and laches as well as for want of due diligence on the part of the petitioners-plaintiffs. The trial court vide its order dated 03.10.2011, dismissed the application moved by the petitioners-plaintiffs. Aggrieved against the aforesaid order, the petitioners-plaintiffs filed the present revision petition.

I have heard learned counsel for the petitioners and have gone through the paper book. I find merits in the contention raised on behalf of the petitioner.

In the present case, even as per the written statement filed at the instance of respondent-defendant, his wife-Nirmala Sachdeva has been stated to be owner in possession of the suit property. Therefore, in the absence of Nirmala Sachdeva, no effective decree for possession could be passed and accordingly, her presence is very much necessary for complete and effective adjudication of the suit. Even while passing the impugned order, the learned trial court has remained conscious throughout that the presence of Nirmala Sachdeva was essential for the disposal of the suit, however, the prayer made by the petitioners-plaintiffs has been declined merely on the ground of delay.

No doubt, there appears to be some delay on the part of the petitioners-plaintiffs while having moved the application for impleading Nirmala Sachdeva as defendant No.2, however, considering the fact that in her absence substantial rights of the parties pertaining to the property in question and the relief sought for in the plaint cannot be effectively granted,

the application moved by the petitioners-plaintiffs under Order 1 Rule 10 CPC for impleading her as defendant No.2 needs to be allowed.

Perusal of impugned order shows that a hyper-technical approach has been adopted by the trial court while declining the prayer made by the petitioners-plaintiffs whereas, in the facts and circumstances of the present case a more pragmatic approach was required to be adopted, in order to do substantial justice between the parties.

In view of the discussion made herein above, the order dated 03.10.2017 is set hereby aside, consequently, the present revision petition is allowed and the prayer made by the petitioner for impleading Nirmala Sachdeva is hereby accepted.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

17.11.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No