

120

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

-:-

CR-678-2022 (O&M)

Date of Decision : 22.03.2022

Manjit Singh and Others

...Petitioners

versus

Kirpal Singh and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Arora, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

Taken up in physical mode.

The present revision petition under Article 227 of the Constitution of India has been filed by the plaintiff-petitioners impugning the order dated 03.01.2022 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Tarn Taran allowing an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 ('CPC' for short) filed by the Gram Panchayat for being impleaded as a party.

Learned counsel for the plaintiff-petitioners would contend that the plaintiffs are *dominus litis* and that no relief has been claimed against the Gram Panchayat in their suit which is for permanent injunction filed against the defendants therein. In support of his argument he has relied upon the following judgments :

- i) Om Parkash & Ors. Vs. Sarv Dharam Ekta Mandir Dharamshala Society & Ors. [2010(66) RCR (Civil) 827];
- ii) Pritam Singh Vs. Manmohan Singh & Ors. [2017(2) PLR 351];

- iii) Shri Gurudwara Sahib Sidhsar & Anr. Vs. Shromani Gurudwara Parbandhak Committee & Ors. [2013(7) RCR (Civil) 2216];
- iv) Harbhajan Singh Vs. Sarup Singh & Ors. [1993(1) PLR 729]
- v) Hazura Singh Vs. Sukhdev Singh [1996(3) RCR (Civil) 419]
- vi) Amar Singh Vs. Gram Panchayat, Sabun [1992 PLJ 69]

in order to contend that when no relief is claimed against a party, the said party would not be a necessary party to the suit.

Brief facts relevant to the present *lis* are that the plaintiff-petitioners filed a suit for permanent injunction to the effect that the defendants in the suit be restrained forever from interfering into the peaceful, lawful and exclusive possession of the land measuring about 74 Marlas consisting of one room, one varanda, trees and vegetable crops, as described in the plaint. It is averred in the plaint that the plaintiff-petitioners are using the said land for the purposes of vegetable crops, to tie their cattle and for keeping the agricultural material and further that a number of trees have been planted by the plaintiff-petitioners on the said suit property. It is further averred that there is a boundary wall of 9 inches towards northern side and on the other sides of suit property the plaintiffs are constructing the outer boundary walls which is clearly depicted in the site plan dated 14.07.2021 as well as in the photographs attached with the plaint. It is the case of the plaintiff-petitioners that they have been in possession of the suit property for more than 60 years through their forefathers. Vide order dated 15.07.2021 interim injunction was granted in favour of the plaintiff-petitioners. On 12.08.2021 an application was filed by the Gram Panchayat of village Mari Gaur Singh, Tehsil Patti, District Tarn Taran to be impleaded as a party on the ground that the plaintiff-petitioner

(Manjit Singh), who is the Nambardar of the village, had filed a frivolous suit and had impleaded the defendants who were his supporters and further that the property in dispute is a 'Chappar' which vests in the Gram Panchayat and under the pretext of the present suit the plaintiffs-petitioners wanted to take possession of the 'Chappar'. It is further stated in the application that the 'Chappar' was being used by all the residents of the village for bathing their cattle and was also provided as a place for drinking water to the cattle.

Reply was filed by the plaintiff-petitioners to the said application. Meanwhile, on 29.09.2021, the defendants in the present suit suffered a joint statement and thereupon the following order was passed by the Trial Court :

“ Both defendants got recorded their joint statement with their counsel that they have got no right or interest with the property in dispute and they are not in possession of the property in dispute and they will not dispossess to anybody from the property in dispute forcibly and illegally.

Reply to application U/o 01 Rule 10 and Section 151 of CPC not filed by plaintiff. Date is requested. On request, case is adjourned to 27.10.2021 for filing reply by plaintiff and requested for extend the stay order. Stay order extended till further order.”

The Trial Court vide the impugned order dated 03.01.2022 allowed the application filed by the Gram Panchayat holding it to be a necessary party to the suit. Para 4 of the impugned order reads as under :

“I have heard the learned Counsel for both the parties with their able assistance and have perused the judicial file minutely. This Court is of the considered view that the present application in hand should be allowed. The present suit has been filed for seeking permanent injunction against the defendants. However, by way of moving present application, Gram Panchayat put forth the

*facts before this Court, which are totally different from the stand taken by the plaintiffs/respondents be joined as defendant to adjudicate the matter effectually and completely and to settle all the questions involved in the present suit and for the purpose of avoiding multiplicity of litigation. Reliance can be placed on ratio of law laid down by Hon'ble Supreme Court of India, in "**Razia Begum Vs. Anwar Begum**" AIR 1958 SC 886 wherein it has been held that the question of addition of party under Order 01 Rule 10 of CPC is generally is not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised, in view of all the facts and circumstances of a particular case."*

The argument raised by the learned counsel for the plaintiff-petitioners that the Gram Panchayat is not a necessary party cannot be accepted at this stage. There can be no quarrel with the law laid down by the judgments referred to by the learned counsel. However, the facts of each case need to be seen. In the present case, what appears, prima facie, to be a collusive suit has been filed by the plaintiff-petitioners. The Gram Panchayat has filed an application bringing totally new facts on the record. The Trial Court in its discretion has allowed the said application which cannot be faulted with.

In the case of **Razia Begum Vs. Sahebzadi Anwar Begum & Ors.** [AIR 1958 (Supreme Court) 886] it has been held inter-alia as under :

"As a result of these considerations, we have arrived at the following conclusions :

(1) That the question of addition of parties under Rule 10 Order I of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view. of all the facts and circumstances of a particular case; but in some

cases, it may raise controversies as to the power of the court, in contra distinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;

(2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy;

(4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of ss. 42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6) The result of a declaratory decree on the question of status such as in controversy in the instant case affects not only the parties actually before the court but generations to come, and, in view of that consideration, the rule of 'I present interest' as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in Section 43 of the Specific Relief Act is not exactly a rule of res judicata. It is narrower in one sense and wider in another."

The Gram panchayat in the present case has a real and direct interest in the suit property which facts have been bought out in the application for impleadment. Further, a perusal of the order 15.07.2021 granting interim

injunction reveals that it has clearly been noted that the only documents produced on the record were some photographs, a site plan and Aadhaar cards of the plaintiff-petitioners supported by an affidavit. It has further been noticed that no document pertaining to ownership of the suit property was produced as the suit property falls within the red line of the village Mari Gaur Singh. Even at the time of hearing, the learned counsel for the plaintiff-petitioners was not able to show any document qua their ownership or possession over the suit property.

Keeping in view the fact that a joint statement had been suffered by the defendants stating therein that they are not interfering in the possession of the plaintiff-petitioners and that the suit has not been contested by the original defendants as also the fact that the Gram Panchayat has filed the application clearly stating therein their interest in the suit property, it would only be proper and necessary for the Gram Panchayat to be impleaded as a party.

There is no error of law or jurisdiction in the impugned order warranting interference by this Court. The petition is accordingly dismissed.

March 22, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO