

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

129

CR-3147-2022

Date of decision: 08.08.2022

Shashi Nagpal

.....Petitioner

Versus

Vibhuti Jauhari and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ajay Dabas, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is impugning the order dated 19.04.2022 (Annexure P-1) vide which an application moved under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') filed for impleading her as defendant was dismissed.

Learned counsel for the petitioner inter alia contends that the trial Court committed manifest error while passing the impugned order and had acted rather arbitrarily in exercising its judicial discretion. He submits that the trial Court failed to consider that the suit property as detailed in the plaint (Annexure P-2) had been purchased in the name of petitioner's brother namely Vinay Jauhari and the petitioner's late mother Kaushalya Jauhari. He submits that the suit property had been purchased for the benefit and welfare of Kashalya Jauhari out of the sale proceeds of sale of a property owned by the father of the petitioner namely late Sh. D.D. Jauhari. It was still further contended that the petitioner along with three of her other sisters were entitled to equal shares in the suit property besides the other assets left behind by their deceased parents. Learned counsel argued that the petitioner was a necessary party and the suit which stood instituted

could not be effectively adjudicated upon without impleading her as defendant.

I have heard learned counsel and perused the relevant material on record.

It would be relevant to observe that the test as to whether a person is to be impleaded or not as a party would be dependent upon the relief claimed by the plaintiff in the suit and still further if it would directly affect such person in the enjoyment of his rights. The person seeking to be impleaded as a party must show that he is directly and legally interested in the outcome of the matter in issue in the suit. Mere interest in the subject matter cannot be a criteria or a ground for joinder of such person as a party to the suit.

Adverting to the case in hand, the suit property was purchased in the year 1993, though sale deed was executed and registered in the year 1998. The deceased Vinay Jauhari and Kaushalya Jauhari were joint owners and later Kaushalya Jauhari also transferred her share in favour of Vinay Jauhari vide gift deed.

This Court is not concerned and cannot go into the legality or otherwise of the gift deed executed by Kaushalya Jauhari in favour of Vinay Jauhari. However, prima facie late Vinay Jauhari was the sole owner of the suit property at the time of his death in the year 2018. Therefore, his class I legal heirs would be entitled to succeed to the properties owned by him and it is only in their absence, class II legal heirs would become entitled to the properties of late Vinay Jauhari.

As regards the suit property having been purchased out of the proceeds of joint family funds, there is nothing on record to prima

facie substantiate the submissions made by the learned counsel. Mere bald assertions would not make the petitioner a necessary party. Strangely and admittedly no such claim was put forth in all these years since 1993 when the suit property was purchased or even after the death of Kaushalya Jauhari, for whose benefit the suit property was alleged to have been purchased.

Interestingly the factum of gift deed, irrespective of the same being valid or invalid, in favour of late Vinay Jauhari has been concealed in the application filed by the petitioner under Order 1 Rule 10 of the Code. Though the petitioner seemingly is well aware of the contents of the plaint (Annexure P-5) filed before the Hon'ble Delhi High Court wherein the factum of the gift deed by Kaushalya Jauhari in favour of Vinay Jauhari stands duly mentioned, however, for reasons best known to the petitioner, the said fact has strangely and very conveniently been not mentioned in the application filed under Order 1 Rule 10 of the Code before the trial Court.

Learned counsel has failed to satisfy this Court in the aforementioned facts and circumstances as to how the petitioner can be said to be a necessary party and how her rights would be infringed in the suit in question.

Accordingly, finding no merit in the instant revision petition, the same is dismissed in *limine*.

08.08.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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