

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

106

CR No.5487 of 2022

Date of Decision: 29.11.2022

Bhup Singh deceased through his LR Sanjay Kumar

...Petitioner

Versus

Neelam Kumari and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Sumit Sangwan, Advocate
for the petitioner.

MEENAKSHI I. MEHTA, J. (Oral)

By way of the instant revision petition, the petitioner, one of the LRs of the plaintiff named Bhup Singh (since deceased), has laid challenge to the order dated 09.11.2022 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Charkhi Dadri (for short 'the trial Court'), in Civil Suit No.126 of 2015, whereby the application Annexure P-2 moved by him, along-with the other LRs of the above-named plaintiff, for seeking permission to withdraw the said Civil Suit with liberty to them to file a fresh one on the same cause of action, has been dismissed.

2. I have heard learned counsel for the petitioner, at the preliminary stage, in the present revision petition and have also perused the file carefully.

3. Learned counsel for the petitioner contends that inadvertently, the State of Haryana, which is a necessary party to the said Civil Suit for its

proper and effective adjudication, could not be arrayed as the defendant and the appropriate relief qua mutation No.628 could also not be claimed in the plaint at the time of filing the said Suit and therefore, the LRs of the plaintiff intend to file a fresh Civil Suit on the same cause of action, after rectifying the afore-mentioned errors/mistakes. To buttress his contentions, he has placed reliance upon the observations as made by the Apex Court in **V. Rajendran and Anr. vs. Annasamy Pandian (D) Thr. Lrs. Karthyayani Natchiar, 2017(1) R.C.R. (Civil) 887.**

4. However, the above-raised contentions are devoid of any merit because a perusal of the plaint Annexure P-4 reveals that the afore-named plaintiff had filed the said Civil Suit for seeking a decree for declaration to the effect that he and the proforma-defendants were the joint owners in possession of the suit land and the sale-deeds executed by defendants No.1 to 3 and subsequently, by defendants No.4 to 7 and also the mutations entered and sanctioned on the basis thereof, were illegal, null and void and he had also prayed for the relief of permanent injunction. In case the petitioner and the other LRs of the plaintiff intend to file a fresh suit by impleading the State of Haryana while considering it as a necessary party for the proper adjudication of the dispute between the parties, then, it is worth-while to mention here that the same may be barred by the law of limitation as against the State of Haryana and even otherwise, the non-joinder of the necessary party in a Civil Suit is not a formal defect that can be cured by filing a fresh Suit on the same cause of action and if the petitioner and the other LRs of the plaintiff do not consider the State of

Haryana to be a necessary party, even then, it is exclusively for the trial Court to take a call on this aspect at the relevant stage in the said Civil Suit.

5. The observations, as made by Hon'ble the Supreme Court in **V. Rajendran and another (supra)**, are of no avail to the petitioner because it has been observed therein that *"the formal defect is a defect of the form prescribed by the Rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis-joinder of parties and failure to disclose cause of action etc"* and it has nowhere been mentioned therein that the non-joinder of the necessary party would be a formal defect and rather, the Apex Court has categorically held in **Moreshtar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi (D) Thr. Lrs. And others, 2022 AIR (SC) 4710** that *"if a necessary party is not impleaded, the Suit itself is liable to be dismissed"*.

6. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the present revision petition, being *sans* any merit, stands dismissed.

29.11.2022
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(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>