

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

CR 2097/2018 (O&M)

Date of decision: 21.02.2023

Surinder Singh

.....Petitioner

Vs.

Tejpal Singh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sushil Jain, Advocate for the petitioner
Mr. Ravi Kapur, Advocate for respondent no.1.

Nidhi Gupta, J.

Present revision petition has been filed seeking setting aside of the impugned order dated 19.3.2018 (Annexure P-8) passed by the Civil Judge (Senior Division), Karnal, whereby application (Annexure P-6) moved by the petitioner under Order 1 Rule 10 CPC seeking impleadment as defendant in Civil Suit (Annexure P-4), filed by the respondent-plaintiff, has been dismissed.

It is the pleaded case of the petitioner that he is partner in a partnership firm under the name and style of M/s Tejpal Singh Kirpal Singh. Respondent no. 1 herein is also a partner in the said firm. The said firm was running its business at Shop No.1 Old Sabzi Mandi, Karnal. In the said firm there were three partners namely (a) S. Tejpal Singh (respondent no. 1 herein), (b) S. Surinder Singh (the petitioner), and (c) S. Kirpal Singh, who has expired. The firm was having a licence of Kacha Ardhtiya which was granted to the said firm on 4.5.1979 as per Haryana State Agricultural Marketing Produce Act,1961 (hereinafter referred to as 'the Act'). As the Old Sabzi Mandi was de-notified in the year 2016, the said partnership firm

being an old licensee, was allotted Plot/ Shop No.574 by the Market Committee, Karnal/respondent no.2 herein.

Respondent no.1 who is one of the three partners, was also separately running another proprietorship firm by the name of M/s T.K. Trading Company in Shop No.32, Old Sabzi Mandi, Karnal. After de-notification of the Old Sabzi Mandi, the proprietorship concern of M/s T.K. Trading Company was allotted shop No.584, New Grain Market, Karnal. Respondent no.1-Tejpal Singh, proprietor of M/s T.K. Trading Company after allotment of shop No.584, New Grain Market, Karnal, subsequently sold the same to one Nathi Ram and others.

It is grievance of the petitioner that when the licence of the partnership concern namely M/s Tejpal Singh Kirpal Singh had to be renewed, respondent no.1 with an intention to oust the petitioner from the partnership firm, and without obtaining consent of the petitioner, applied for renewal of licence as sole proprietor thereof, and also forcefully took over the possession of the shop No.574 which was allotted to the partnership firm. Respondent No.1 showed himself as sole proprietor of said partnership firm namely M/s Tejpal Singh Kirpal Singh, and tried to show himself as proprietor of the said plot/shop No.574, New Grain Market, Karnal also.

Aggrieved of the above actions of Respondent no. 1, the petitioner filed Civil Suit (Annexure P-1) for declaration and permanent injunction, claiming 1/3rd share in the shop No.574, New Grain Market, Karnal, along with other properties that belonged to the partnership firm. Respondent no.1 is defendant no.1 in the said suit, and Haryana State Agriculture Marketing Board (hereinafter referred to as 'HSAMB') is impleaded therein as defendant no.22. In the said suit, the petitioner moved

an application under Order 39 Rules 1 and 2, in which the learned Trial Court vide order dated 8.9.2015 (Annexure P-3) granted ad interim injunction and restrained the respondent/ defendant no.1 from alienating SCF No.574 in New Sabzi Mandi till further orders.

Thereafter, respondent no.1 filed the present Civil Suit dated 18.7.2017 (Annexure P-4) for mandatory injunction. Prayer of the respondent no. 1 in the said suit is for issuance of “*a decree for mandatory injunction thereby issuing a mandate to the defendant to renew the licence of the plaintiff....*”. By way of the said suit the respondent no. 1 is seeking the renewal of his license for the proprietorship concern in the name of M/s T.K. Trading Company, *however*, on basis of Shop no. 574 which has been allotted in name of partnership concern. Market Committee, Karnal through its Secretary is the sole defendant in the said suit, and Petitioner has not been impleaded even though renewal of license is being sought on basis of shop no. 574 in which the petitioner has equal right. Accordingly, petitioner filed present application under Order 1 Rule 10 read with Section 151 CPC for his impleadment, being one of the partners in the said partnership firm namely M/s Tejpal Singh Kirpal Singh, in whose name Shop no. 574 stands allotted. It is this application (Annexure P-6) of the petitioner which has been dismissed vide impugned order Annexure P-8. Hence, present revision petition.

It is inter alia, submitted by the learned counsel for the petitioner that admittedly petitioner is a partner in the said partnership firm namely M/s Tejpal Singh Kirpal Singh. Admittedly too, Shop no. 574 has been allotted in the name of said partnership firm namely M/s Tejpal Singh Kirpal Singh. Accordingly, license of proprietorship concern of respondent

no. 1 namely M/s T.K. Trading Company cannot be renewed on basis of shop no. 574, at the back of the petitioner. It is submitted that accordingly, petitioner is a necessary party to the civil suit filed by respondent no.1 herein.

It is submitted that in order to get the licence renewed there is requirement of signatures/NOC of all the surviving partners, however, respondent no.1 has tried to get the licence renewed without the consent of the petitioner. It is submitted that this cannot be done as the petitioner being partner of the firm has 50% right, as third partner-Kirpal Singh has expired.

It is further submitted that shop in question bearing No.574 was allotted to the partnership firm and not to respondent no.1 in his individual capacity, however, respondent no. 1 has shown himself to be sole proprietor of shop no. 574. It is submitted that respondent no.1 cannot be allowed to get renewed the licence of his proprietorship concern M/s T.K. Trading Company on the shop of partnership firm.

It is further submitted that Id. Trial Court did not consider the fact that Civil Judge (Junior Division), Karnal vide order dated 8.9.2015 had already restrained the respondent no.1 from alienating the Shop no. 574 and that the matter regarding determination of the share of petitioner with respondent no.1 is sub-judice before the Civil Court. It is reiterated that respondent no.1 cannot be permitted to renew the licence of his proprietorship concern namely M/s T.K. Trading Company in the premises of M/s Tejpal Singh Kirpal Singh, a partnership firm as, the petitioner is also a partner of said partnership firm.

In response, Id. Counsel for the respondent no.1 relies upon the reasoning of the Trial Court in dismissing the application of the petitioner under Order 1 Rule 10 CPC, which is reproduced hereinbelow:-

“6. In the present suit, the plaintiff firm has simply sought renewal of licence from Municipal Corporation. Even if there is any dispute regarding the Shop No.574, that would not be a bar by itself in claiming the renewal of licence by the plaintiff. The controversy qua the renewal of licence can be very well decided even in the absence of applicant. As such, the applicant is not a necessary party to the present suit. The suit has been filed by the plaintiff who is master of his own suit and the applicant not being a necessary party for determining the question of renewal of licence claimed by the plaintiff cannot be allowed to be impleaded against the wishes of the plaintiff. The case laws cited by learned counsel for the applicant are distinguishable on facts”.

No other argument has been raised on behalf of the parties.

Heard Id. Counsel for the parties.

Perusal of the record of the case shows that petitioner had filed the civil suit for declaration and permanent injunction (Annexure P-1) wherein the petitioner, inter alia, sought declaration of his ownership in the various properties of the partnership firm, as per respective shares.

In this suit, as noticed above, HSAMB/ defendant no. 22 filed written statement (Annexure P-2) in which, in para 4 of their reply on merit HSAMB stated as follows: -

“4. That the contents of para no.4 of the plaint is correct to the extent that on the address of S.C.F. No.1, a partnership firm is registered under the name and style of M/s Tejpal Singh Kirpal Singh. It is wrong and hence denied, that shop has been allotted in the name of Tejpal Singh. It is worthwhile to mention here that the answering defendant allotted the shop in the name of Firm M/s. Tej Pal Kirpal Singh and consequently every partner, if any, has proportionate right in the shop

in question as per their partnership deed. It is pertinent to mention here that the plaintiff never raised any objection before the Chairman/Administrator Market Committee, Karnal when the shop no.574 was allotted in the New Sabzi Mandi, Karnal in the name of M/s. Tejpal Singh Kirpal Singh. It is worth to mention here that the shop has been allotted by the concerned authority as per the terms and conditions formulated by the Govt. and after considering the documents placed by the partner of firm Sh. Tejpal Singh i.e. Receipt No.72 of Karnal Improvement Trust, Karnal, Receipt No.42 of M.C., Karnal, affidavit tendered by the partner of firm Sh. Tejpal Singh. Hence the allotment of shop in question is totally legal and as per the terms and condition laid by the Govt. It is worth to mention here that the said Tejpal moved an application for the allotment of a plot of shop in New Sabzi Mandi Karnal before the Answering Defendant, but due to the non- compliance the condition the application of the said firm has been rejected vide order dated 06.01.2002. Aggrieved from that order the said firm preferred an appeal before the Financial Commissioner, Chandigarh and by the order dated 25.08.2011 of Financial Commissioner, Chandigarh the plot no.574 has been allotted in the name of said firm M/s Tejpal Singh Kirpal Singh. It is also pertinent to mention here that the said Tejpal while filing an appeal against the order of answering defendant, before the Chief Administrator and Financial Commissioner, the said Tejpal showed himself as proprietor. It is also worth to mention here that during the period of application and appeal, the plaintiff never raised any objection, on the said allotment. Now the plaintiff in connivance with the defendants no.1 to 20 intends to grab a new shop in New Sabzi Mandi, Karnal from the answering defendant in his name by filing such type of false litigation and also caused the loss to the Government. It is also worth to mention here that

shop no.574 has been allotted in the name of M/s. Tej Pal Singh Kirpal Singh not in the name of Tejpai Singh". (Emphasis supplied)

From the perusal of the above it is evident that respondent no.2 herein has admitted that M/s Tejpai Singh Kirpal Singh is a partnership firm and that the shop in question bearing No.574 was allotted in the name of said partnership firm and therefore, every partner "*has proportionate right in the shop in question as per their partnership deed*".

Further, undisputedly, in the application of the petitioner under Order 39 Rules 1 and 2 CPC, Civil Judge (Junior Division), Karnal vide order dated 8.9.2015 (Annexure P-3) had directed that "*this Court orders that defendant no.1 is restrained from alienating SCF No.574 in the New Sabzi Mandi till further orders*".

Thereafter, respondent no.1 filed the present suit for mandatory injunction (Annexure P-4), seeking a direction to respondent no. 2 herein that license of his proprietorship concern M/s T.K. Trading Company, be renewed on basis of Shop no. 574. This suit has been filed by respondent no. 1 as the sole plaintiff, and not on behalf of M/s T.K. Trading Company proprietorship concern; nor M/s Tejpai Singh Kirpal Singh partnership firm, has been arrayed as party in the said suit. Market Committee, Karnal is sole defendant.

Further, in para 5 of the said suit respondent no. 1 has pleaded as follows:

"5. That plaintiff was also allotted one another shop i.e. Shop No.574 in the New Grain Market through its prop. Tej Pal Singh [plaintiff] and the plaintiff wrote a letter to the Market Committee Karnal on 30.4.2016 to transfer the said licence on shop no.574, New Grain Market, Karnal i.e. M/s

Tejpal Kirpal Singh through Tejpal Singh its Prop and vide form 'K' no.116 receipt no.147 Market Committee renewed licence of M/s T.K. Trading Company to shop no.574 and receipts have been duly issued by defendant. Copies of the receipts are enclosed herewith”.

Pleadings of respondent no.1 in Para 9 of the said civil suit are also relevant which are reproduced below:-

“9. That secondly in the objection it has been stated that in a civil suit which has been filed by Surender Singh in the court of Shri Ashwani Gupta, Ld. Civil Judge, Karnal is a wrong information as Surender Singh has not filed any file any civil suit but same has been filed by son of Surinder Singh Moreover, the Hon'ble Court has passed the order not to alienate the shop no.574 and there is not order by which the defendant has been restrained from renewing the licence”.

In their written statement Annexure P-5 to this civil suit for mandatory injunction, respondent no.2 herein has stated in para 5 of their written statement as under:-

“5. That in reply to para no.5 of the plaint it is submitted that as per the record of defendant, the said shop no.574 has been allotted in the name of M/s. Tejpal Singh Kirpal Singh the defendant has no empower to renew the license of T.K. Trading Company on the shop No.574. Whereas the plaintiff very well known that the said firm i.e. M/s. Tejpal Singh Kripal Singh has about 20 (sic) partners and if the plaintiff intends to get transfer the name of said firm in his name then he has to get the NOC from all the partners of said firm. It is also worth to mention here that there is a dispute is still pending in the Civil Courts at Karnal and now the plaintiff intends to renew the license of said firm in his name then the plaintiff has to get the permission from the concerned court in which

the suit is still pending. It is also worth to mention here that the concerned court of Shri Ashwani Gupta, Learned Civil Judge, Junior Division, Karnal has passed an order dated 08.09.2015 and clearly stated that the allotment rules itself provides a restriction regarding the sale/transfer for five years. In these circumstances the court orders that the defendant no.1 is restrained from alienating SCF No.574 in the New Sabzi Mandi, till further orders. Hence the defendant could not do anything in this matter without the direction of the Civil Courts at Karnal and as per the order of civil courts, Karnal the defendant could not do anything in this matter and if the plaintiff initiated any proceeding against the defendant, then the defendant has a right to initiate the contempt of court proceeding against the plaintiff”.

Thus, from the above pleadings it transpires that respondent no.1 has portrayed himself as sole proprietor of the partnership firm M/s Tejpal Singh Kirpal Singh and has written a letter to the Market Committee, Karnal on 30.4.2016 to transfer the said licence of Shop No.574, New Grain Market, Karnal i.e. M/s Tejpal Singh Kirpal Singh through Tejpal Singh its proprietor, in name of his proprietorship concern M/s TK Trading Co.. Perusal of the facts enumerated above also shows that respondent no.1 has made a passing reference to the order dated 8.9.2015.

Be that as it may, in my view, the dispute inter-se the parties will be adjudicated upon in due course and decided in the pending litigation(s). However, for the purposes of the present proceeding, it is sufficient that given the categoric and consistent stand of respondent no. 2 herein, to the effect that: M/s Tejpal Singh Kirpal Singh is a partnership firm and the said shop no. 574 has been allotted in the name of the partnership firm in which the petitioner is a partner; and that each of the partners has a

proportionate right in the shop in question as per partnership deed; and license of respondent no. 1 cannot be renewed on basis of said shop without NOC from the partners; it was incumbent upon the Id. Trial Court to discern that the petitioner is a necessary party to the suit in view of the undisputed fact that he is a partner in the firm M/s Tejpal Singh Kirpal Singh.

From the above facts in my considered view, it is clear that the petitioner is a necessary party to the suit for mandatory injunction filed by respondent no.1 and the reasoning given by learned Trial Court that *“plaintiff firm has simply sought renewal of licence from Municipal Corporation”* is misplaced as, learned Trial Court has lost sight of the fact that respondent no.1 has sought renewal of licence of his proprietorship concern by showing his place of business as shop no. 574, which actually stands allotted by HSAMB to the partnership firm M/s Tejpal Singh Kirpal Singh in which the petitioner is admittedly a partner. No doubt, plaintiff is dominus litus of his suit, however, in view of the facts as noticed hereinabove, in my view, the petitioner is a proper and necessary party herein.

In this regard, reliance may be placed upon judgment of this Court in case of **Smt. Shyama Jain v Savitri Devi**, Law Finder Doc Id # **2274**, para 6 of which is reproduced hereinbelow:-

“6. Having heard learned counsel for the parties at considerable length and perusing the record with their assistance, I am of the considered opinion that this revision petition deserves to succeed and the impugned order dated 24.8.200 passed by the Civil Judge is liable to be set aside. The averments made in the application clearly establish the interest of the applicant- petitioner inasmuch as it has been averred that she has purchased the land and constructed the house by leaving the area of 200 square yards for the

passage. She has further asserted that when the plaintiff-respondent No. 1 constructed the staircase illegally obstructing the free access to the house of the applicant-petitioner, she has to file a complaint on 27.2.2000 to the Deputy Commissioner, Narnaul and the notice dated 28.2.2000 issued to plaintiff respondent No. 1 is on the basis of her complaint. Therefore, the applicant- petitioner is a necessary party and it has to be held that the order passed by the Civil Judge suffers from material irregularity and illegality. Both the judgments relied upon by the learned counsel substantially support his submission because in Nand Lal Nandwani's case (supra), this Court has taken the view that in a suit for permanent injunction restraining the Municipal Committee from demolishing the plaintiff's wall on the disputed land, the presence of the person who had his house situated opposite just across the street was considered necessary and he was held to be a person interested within the meaning of Order 1, Rule 10 of the Code. Therefore, the revision petition deserves to be allowed and the impugned order dated 24.8.2000 is liable to be set aside". (Emphasis supplied)

Reference is also made to **Rajiv Goel v Sohan Lal Khosla**, Law Finder Doc Id # **208664** and **Krishan Lal v Sudesh Kumari**, Law Finder Doc Id # **30625**. Head note in **Krishan Lal's case (supra)** reads as follows:-

“Civil Procedure Code, 1908, Order 1 Rule 10 - All co-owners are necessary party to a suit to recover property belonging to them jointly - Impleading of parties - Factors which may be considered by the Court - On re-iteration of the settled principles and in a derivative manner, it is possible to indicate certain factors which may be considered by the Court while determining such a question:-

(a) Whether the applicant is a necessary and proper party keeping in view the facts and circumstances of the case-

(b) Whether presence of such a party before the court is necessary for effectively and completely adjudicating the matter and granting a complete and effective decree to the party entitled to-

(c) Whether such a party interested would be directly affected as a result of culmination of such persons in-to decree or it would only be affected remotely, indirectly and distantly -

In addition to above, where the Court considers the presence of a party necessary or proper for complete adjudication, then it may well be considered relevant whether non-impleadment of such a party would result in avoidable multiplicity of litigation, the effort should be to implead a party rather than to force the party to go to a fresh litigation”

In view of the factual and legal position as noticed above, present revision petition is allowed, and impugned order dated 19.3.2018 (Annexure P-8) passed by Civil Judge (Senior Division) Karnal is set aside, and application filed by the petitioner under Order 1 Rule 10 CPC for impleadment as defendant in Civil Suit No.118/2017 (Annexure P-4), is allowed.

Pending applications if any, stand disposed of.

(Nidhi Gupta)
Judge

21.02.2023
Joshi