

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-401-2023

Date of Decision :11.04.2023

Gurmeet Kaur

..Petitioner

Versus

Nirbhay Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Jain, Advocate for the appellant.

Mr. Sartaj Singh Punia, Advocate for respondents No.1 and 2.

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Harsimran Singh Sethi, J. (Oral)

Present civil revision petition has been filed challenging order dated 03.12.2022 (Annexure P/1) passed by the Civil Judge (Junior Division), Ambala by which, an application filed by respondent-defendant No.1 under Order 1 Rule 10(2) read with Section 151 of the CPC for impleading one Harpreet Kaur-widow of Bhupinder Singh and her minor daughter-amratveer Kaur as defendants has been allowed.

Learned counsel for the petitioner-plaintiff argues that the petitioner-plaintiff had filed a civil suit seeking possession of the shop in question, which is stated to be in the possession of respondents and she is contesting her claim against the two occupants of the property in question. Learned counsel for the petitioner submits that after the evidence was led by the petitioner-plaintiff, respondent-defendant No.1 filed an application

under Order 1 Rule 10(2) read with Section 151 of the CPC for impleading Harpreet Kaur widow of Bhupinder Singh and her minor daughter Samratveer Kaur as defendants in the suit by alleging that the said Harpreet Kaur and her minor daughter are actual owner of the property in question and are necessary parties.

Learned counsel for the petitioner-plaintiff argues that the said application was allowed by the trial Court vide impugned order dated 03.12.2022 without appreciating the fact that plaintiff had claimed no relief against the said Harpreet Kaur widow of Bhupinder Singh and her minor daughter Samratveer Kaur and the respondent No.1 cannot dictate the terms to the plaintiff as to against whom the plaintiff should contest the claim. The reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.6370-2022** titled as **Sudhamayee Pattnaik and others vs. Bibhu Prasad Sahoo and others** decided on 16.09.2022.

Learned counsel for the respondents submits that once the property in question belongs to Harpreet Kaur-respondent No3, she is a necessary and proper party for adjudication and hence, the application filed by the respondent-defendant No.1 for impleading her as necessary and proper party has rightly been allowed by the trial Court.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It may be noticed that Harpreet Kaur widow of Bhupinder Singh and her minor daughter Samratveer Kaur have not filed any application claiming the ownership of the property in question as of now. Application under Order 1 Rule 10 (2) read with Section 151 of the CPC has been filed by respondent-defendant No.1 raising the said assertion. Once the

alleged owners have not raised any claim despite knowing the pendency of the present proceedings, on the asking of respondent-defendant No.1 nobody can be impleaded as defendant and that too against the wishes of the plaintiff. The law settled by the Hon'ble Supreme Court of India in *Sudhamayee Pattnaik (supra)* squarely covers the claim of the petitioner-plaintiff. Relevant paragraph of the judgment is as under:-

“5.We have heard learned counsel for the respective parties at length. At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the domus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.

Keeping in view the settled principle of law noticed hereinbefore, order dated 03.12.2022 (Annexure P/1) passed by the Civil Judge (Junior Division), Ambala is set aside. However, it is made clear that this Court is not making any observation with regard to the claim, if any, raised by Harpreet Kaur and her minor daughter Samratveer Kaur independently. If any such claim is raised, same will be decided accordingly on merits coupled with law.

Present revision petition stands allowed in above terms.

April 11, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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