

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

CR-8049-2018(O&M)

Date of decision:-27.1.2023

M/s Narinder Kapoor HUF through its Karta Sh.Narinder Kapoor

...Petitioner

Versus

Shilpi Jain and others

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Namit Gautam, Advocate
for the petitioner.

Mr.Aayush Gupta, Advocate
for respondent No.1.

Mr.Gurcharan Dass, Advocate
for respondent No.12.

H.S. MADAAN, J.

1. Here is the classic case of sluggishness and carelessness on the part of the plaintiff, who had filed a civil suit in the Court way-back on 8.6.2007 more than 15 years back. In the civil suit plaintiff M/s Narinder Kapoor HUF through its Karta Narinder Kapoor had sought a declaration and permanent injunction and in the alternative for separate possession by partition.

2. Notice of that suit was given to defendants, who put in appearance and offered a contest. Issues on merits were framed and the case was posted for evidence of the plaintiff. The case kept being adjourned mostly on request of counsel for the plaintiff. The plaintiff had filed an application on 20.9.2016 seeking amendment of the plaint and

impleading of further defendants, which was allowed vide order dated 26.10.2016. The plaintiff had been filing various applications at times and seeking adjournments. The entire history of the case has been given in the impugned order. Now the plaintiff has filed another application under Order 1 Rule 10 CPC for impleading persons mentioned in the application as defendants No.46 to 94.

3. Vide the impugned order dated 20.10.2018, that application was dismissed leaving the plaintiff aggrieved and the plaintiff has approached this Court by way of filing the present revision petition, notice of which was given to the respondents No.1, 5 to 7, 8, 12, 13, 27, 29, 36 to 39 and 43 to 45 and only respondents No.1 and 12 have put in appearance through counsel.

4. I have heard learned counsel for the parties besides going through the record.

5. After hearing learned counsel for the parties and going through the record, I find that the conduct of the plaintiff has been such that the application should be dismissed but at the same time it has to be kept in mind that in the suit the plaintiff is seeking an alternative relief of separate possession by way of partition. For grant of that relief, all the co-sharers must be there before the Court. The plaintiff has woken out of slumber after a long time moving the application under reference after 11 years of filing of the suit. This shows casual and sluggish approach of the plaintiff which is evident from the fact that he had filed a similar application earlier in the year 2016, which had been allowed. At that very time, the plaintiff should have been cautious and careful enough to

implead all the co-sharers, which he did not do. However, in case the application is dismissed that would mean shutting the doors upon the plaintiff with regard to alternative relief since in absence of all the co-sharers, this relief may not be granted to him, that would result in injustice to him. But on account of such conduct of the plaintiff, he needs to be burdened with exemplary costs.

6. Therefore, for the reasons mentioned above, the revision petition is accepted. The order under revision is set aside and the application under Order 1 Rule 10 CPC filed by the plaintiff is allowed, subject to the following conditions:

- (i) The plaintiff shall deposit a sum of Rs.50,000/- with District Legal Services Authority, Ludhiana and submit a receipt in that regard in the trial Court within 10 days of the receipt of copy of this order, only then the application shall be taken to have been allowed, otherwise not.
- (ii) It shall be responsibility of the plaintiff to get the service effected upon newly added defendants by taking dasti notices as far as the defendants now sought to be added within jurisdiction of Punjab, Haryana and Delhi are concerned and if some of the defendants are residing in areas outside such States, their service be got effected by sending notices to them through registered AD post, courier service and electronic means.
- (iii) Only two reasonable opportunities for the purpose shall be granted and in case the plaintiff fails to serve some of the

defendants, the suit against them may be dismissed by the trial Court in its discretion. Since the suit is quite old, the trial Court shall give very short adjournment in the case for completion of proceedings and if it is found that the request of plaintiff for adjournment is without justification or if the plaintiff files any application without justification then exemplary cost be imposed upon him.

Since the main revision petition has been allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

27.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No