

2023:PHHC:135668

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

1.CR-8222-2017 (O&M)

Satish

....Petitioner

Versus

Poothal and others

..Respondents

2.CR-8223-2017 (O&M)

Satish

....Petitioner

Versus

Raj Kapoor and others

..Respondents

Date of decision: 17.10.2023

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Jain, Advocate for the petitioner

Mr. Sudhir Aggarwal and
Mr. Ishan Aggarwal, Advocates for
respondent no.2, 3 and 5 in CR-8222-2017
and for respondent no.3 to 5 in
CR-8223-2017

Mr. Pardeep, Advocate for
Mr. Anand Bishnoi, Advocate for respondent no.7
CR-8223-2017

ANIL KSHETARPAL, J (Oral)

1. Two connected revision petitions challenging the two identical orders passed by the trial court, while dismissing the application under Order I Rule 10 of the Code of Civil Procedure, 1908, to implead Ejokiyal Joshua, as defendant in the suits for

partition, have been filed and shall be disposed of by a common order.

2. Admittedly, Sh.Ejokiyal Joshua purchased undivided share in the two different khewats vide sale deed dated 05.03.1997. The plaintiff (petitioner herein) filed a suit for possession by way of partition of the property with a consequential relief of permanent injunction. When the proceedings were pending before the trial court, mutation of the property was sanctioned in favour of Sh. Ejokiyal Joshua in the year 2014. The petitioner, on coming to know of the fact that Sh.Ejokiyal Joshua is one of the co-owners, the plaintiff filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908, to implead him as defendant, which, as already noticed, has been dismissed by the court below.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. The trial court has dismissed the application primarily on the following two grounds:-

i) The application has been filed after a period of 4 years of the filing of the written statement.

ii) This application has been filed to fill up the lacuna.

4. On the one hand, the learned counsel representing the petitioner contends that in a suit for partition, a co-sharer is required

to be impleaded as party, therefore, the court has wrongly dismissed the application. He submits that the petitioner has gained knowledge of purchase by Sh. Ejokiyal Joshua, during the pendency of the suit.

5. On the other hand, the learned counsel representing the respondent submits that the rights of Sh. Ejokiyal Joshua can be looked after by his vendor, who is a party in one of the suit. He submits that the suit for partition has remained pending for nearly 9 years and therefore, the court should not allow the application.

6. This Court has considered the submissions. There is no dispute that Sh.Ejokiyal Joshua purchased the undivided share vide the registered sale deed dated 05.03.1997 i.e before filing of the suit. The plaintiff (petitioner herein) did not implead him as a party as the revenue entry was not updated in favour of Sh.Ejokiyal Joshua. A co-sharer is a necessary party and in the absence thereof, the suit is liable to be dismissed. In such a situation, the trial court should have allowed the application by imposing the penalty to pay some costs for the delay. However, the application should not have been dismissed, particularly when the person sought to be impleaded is a necessary party in a partition suit. There is no substance in the argument of the learned counsel representing the respondent that the interest of person sought to be impleaded can be safeguarded by his vendor. The important rights of Sh.Ejokiyal Joshua are required to

be decided in a suit for partition. He has to be given an opportunity to contest the suit.

7. Keeping in view the aforesaid facts, the impugned order in both the suits are set aside. The application filed by the plaintiff to implead Sh.Ejokiyal Joshua as a party shall stand allowed.

8. Learned trial court is requested to make sincere endeavour for expeditious disposal of the cases.

9. The revision petitions stand allowed.

10. All the pending miscellaneous applications, if any, are also disposed of.

17.10.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**