

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 1226 of 2023

Pronounced On : September 13, 2023

Surinder
vs.
Haryana Waqf Board and others

.... Petitioner
.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Rajesh Goyal, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
with Mr. Ashish Gupta, Advocate
for respondent no.1.

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GURBIR SINGH, J. :

1. Challenge in this petition filed under Article 227 of the Constitution of India is to order dated 04.01.2023 (Annexure P-4), passed by learned Civil Judge (Junior Division), Panipat, whereby application filed by respondent no.1 under Order 1 Rule 10 CPC has been allowed.
2. Learned counsel for the petitioner submits that the plaintiff-petitioner filed a suit for declaration and permanent injunction against respondents no.2 to 4 (Annexure P-1), claiming himself to be the owner of 1/3rd share on the basis of oral family settlement. Respondent no.1 – Haryana Waqf Board filed an application in the suit under Order 1 Rule 10 CPC for impleading it as party (Annexure P-2) in the instant suit.
3. Learned counsel for the petitioner further submits that dispute

between the parties is mainly a family dispute and no relief has been claimed against respondent no.1 - Haryana Waqf Board. Plaintiff is dominus litus and cannot be forced to litigate against a person with whom he has no issue. It is further submitted that if respondent no.1 - Haryana Waqf Board is impleaded as a party, then the suit itself would not be maintainable. Jurisdiction of Civil Court would be ousted. In support of his contentions, learned counsel for the petitioner has relied upon two judgments of Hon'ble Supreme Court namely **Gurmit Singh Bhatia vs. Kiran Kant Robinson and others** reported as **2019(3) RCR (Civil) 809** and **Sudhamayee Pattnaik and others vs. Bibhu Prasad Sahoo and others** reported as **2022 AIR (Supreme Court) 4304**, wherein it has been held that plaintiff cannot be forced to add parties against whom he does not want to fight.

4. Learned counsel appearing for respondent no.1 has contended that the suit property is *kabristan* and is owned by Haryana Waqf Board. He has placed on file a copy of the report of the application sent by the Block Development and Panchayat Officer (BDPO) to the concerned Executive Officer of the Haryana Waqf Board for removal of the illegal possession over the suit property. Since prima facie respondent no.1 – Haryana Waqf Board is owner of the suit property, so, it is not stranger to the proceedings. It has every right to take steps to protect its rights.

5. I have heard learned counsel for the parties and perused the case file.

6. The plaintiff has filed the suit on the ground that the plaintiff is owner in possession of the suit property to the extent of 1/3rd share, as per

the oral family settlement. The suit property is comprised in Khasra No.229, which is admittedly a *kabristan*.

7. Now the question is : Whether two parties can litigate against one another seeking declaration of title, without impleading the party who is *prima facie* owner of the property ? The answer is in negative. Since respondent no.1 – Haryana Waqf Board has every right to raise objections if a third person is getting decree of the property, which is owned by it, so the Haryana Waqf Board was required to be impleaded as necessary party in the instant case. However, the plaintiff-petitioner failed to do so. Respondent no.1 – Haryana Waqf Board is necessary as well as proper party to the suit. An owner of property cannot shut its eyes when its property is being claimed by one person against the other. The owner of property has every right to be impleaded as party in a case where its property is subject matter of litigation. No doubt, the plaintiff is *dominus litis* but plaintiff is required to implead original owner as party when decree for declaration regarding ownership is claimed. The plaintiff has framed the suit in such a manner to avoid jurisdiction of Wakf Tribunal. It is against spirit of law. The Court is required to unfold the real pleadings and a Court cannot be a mute spectator for bye-passing any special law. In case **Gurmit Singh Bhatia (supra)**, suit for specific performance was filed keeping in view that stranger to contract cannot be added as a party, so the subsequent vendee was not allowed to be impleaded as party. In the case of **Sudhamayee Pattnaik (supra)**, Hon'ble Apex Court held that subsequent purchasers cannot be impleaded as a party-defendants, unless the Court suo motu directs to join any other person for

effective decree and for proper adjudication. The said authorities are not at all applicable to the facts of the instant case since Haryana Waqf Board is necessary as well as proper party.

8. In view of the aforesaid, there is no infirmity in the order dated 04.01.2023 (Annexure P-4), passed by learned Civil Judge (Junior Division), Panipat, whereby application filed by respondent no.1 under Order 1 Rule 10 CPC has been allowed.

9. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

10. Pending applications, if any, shall stand disposed of along with this judgment.

September 13, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.