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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1645-2023 (O&amp;M)

Date of decision: March 16, 2023

Sumesh Anand

....Petitioner

versus

Lalit Anand and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Maninder Singh Saini, Advocate for petitioner.

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**ARUN MONGA, J. (ORAL)**

Petition herein is for setting aside order dated 12.11.2021 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Ludhiana whereby application under Order I Rule 10 of Code of Civil Procedure, 1908 (for short 'CPC') read with Section 151 of CPC for impleadment of petitioner as party-defendant No.3, was dismissed.

2. I have heard learned counsel for petitioner and gone through the record.

3. Impugned order dated 12.11.2021 passed by learned Additional Civil Judge (Senior Division), Ludhiana is premised, *inter alia*, on the following reasoning:

“5. Before I delve upon factual background of application in hand, it would be imperative to mention over here that the plaintiff is always considered as *dominus litus*. It is his prerogative to implead parties to suit. However, if a party proves this fact that no effective decree could be passed in his absence, then that party is considered as necessary party and can be impleaded even against the wishes of plaintiff.

6. Adverting to the facts of case in hand, the suit in hand has been filed by plaintiffs for seeking the relief of declaration to the effect that plaintiffs no. 1, 2 and 3 alongwith plaintiffs no. 4 to 7 have become owners in joint possession over the properties left by Bimla Kumari. Precisely speaking the case of plaintiffs is that Bimla Kumari wife of late Lekh Raj has died and before her death, she had executed the Will dated 15.02.2005 in favour of plaintiffs no. 1 to 3 and late Sh.

*Tapinder Kumar Predecessor of plaintiffs no.4 to 7, thereby bequeathing her entire property in favour of all these legatees. Now by way of application in hand applicant intends get himself impleaded as defendant in the suit in hand so that he may ultimately prove on record that the Will so propounded by plaintiffs is false, forged and fabricated document. Therefore, property left by Bimla Kumari should not devolve as per contents of Will propounded by plaintiffs.*

*7. Even if for the sake of arguments the assertions of applicant are admitted as Gospel's Truth, yet applicant cannot be treated as necessary or proper party to the suit in hand. Since if the devolution of property left by Bimla Kumari is not governed by Will allegedly executed by her, even then it would be governed by the provisions envisaged in Section 15 of the Hindu Succession Act, 1956 wherein it has been clearly stipulated that the property of female Hindu dying intestate shall devolved firstly upon the sons and daughters including the children of any predeceased son or daughter and the husband,. Meaning thereby that even if for the sake of arguments it is believed that the property left by deceased Bimla Kumari is not to devolve as per the Will propounded by plaintiffs, even then it would devolved equally upon her children. It is admitted case of applicant himself that he is grandchild of Bimla Kumari and his father namely Ramesh Chander is plaintiff no.2 in the present case. Meaning thereby that father of applicant who is obviously a necessary party is plaintiff in the present case. Therefore, applicant is neither necessary nor proper party to the present case. Therefore, there is absolutely no ground for impleading the applicant to present suit. Hence application in hand is hereby dismissed."*

4. Grounds urged and argued herein are that a tampered will dated 15.02.2005 of Bimla Kumari has been produced by the plaintiffs to grab the property; the untampered original will in the custody of the petitioner. Being the son of plaintiff- respondent No. 2, the petitioner is a member of the HUF and has a right to share in the HUF property in dispute; the original defendants No. 1-2 (both daughters of Bimla Kumari) have been proceeded against ex-parte, making it evident that the suit has been filed to obtain a collusive decree by hoodwinking the civil court.

5. In my opinion, the learned trial court as rightly noted that even in the absence of will of Bimla Kumari set up by the plaintiffs, in terms of section 15 of the Hindu Succession Act, 1956, her property would devolve upon her husband, sons and daughters including the children of her predeceased children.

The petitioner's father Ramesh Chander Anand is alive and already a party to

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the suit being plaintiff No. 2 . In his presence, it cannot be said the petitioner is a necessary party in the case. It is not shown how the petitioner would be adversely affected by the outcome of the pending suit, if he is not impleaded as a party.

6. In the premise, having heard the arguments of learned counsels for parties, there is no room for interference in the aforesaid valid reasons recorded by learned Court below.

7. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

8. In the premise, instant revision petition is dismissed.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

March 16, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No