

2023:PHHC:134810

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

245

**CR No.1661 of 2019
Date of Decision: 13.03.2023**

Himanshu Aggarwal

.....Petitioner

vs.

Tilak Raj and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Parminder Singh, Advocate for the petitioner.
Mr. Rahul Deswal, Advocate for respondent Nos.1 to 3.
Mr. Rajesh Bansal, Advocate for respondent No.4.

VIKAS SURI, J.

This civil revision petition filed under Article 227 of the Constitution of India is directed against the order dated 25.02.2019 (Annexure P-3), whereby, the application of the applicant-petitioner for being impleaded as a party respondent and join proceedings at the appellate stage as the sole legal representative of Smt. Anita Rani (sister of plaintiff-respondent Nos.1 to 3), was dismissed.

It is submitted by the learned counsel for the petitioner that the plaintiff-respondents have filed a suit for declaration and permanent injunction with regard to the properties inherited from their father-Raj Kumar, who is stated to have died on 06.06.2012. It is pleaded that the plaintiff-respondents are the sons of Raj Kumar from the first wife, namely, Kusumlata. Admittedly, the applicant-petitioner is the son of the real sister of the plaintiff-respondents. After the demise of Kusumlata, Raj Kumar had married with Smt. Sunita Devi (respondent No.4 herein). The plaintiffs on one side and stepmother on the other had set up respective Wills raising claim to the estate left by Raj Kumar. The trial Court discarded both the

Wills and dismissed the suit. Aggrieved by the judgment and decree passed by the trial Court, the plaintiffs preferred an appeal before the first appellate Court, wherein, the applicant-petitioner moved an application under Order 1 Rule 10 CPC averring to be a necessary party having common interest in the estate of Raj Kumar, being one of the four siblings, after the death of their mother Kusumlata.

Smt. Anita Rani had died on 25.03.2006. Before the lower appellate Court, the contesting plaintiff-respondents had given their no objection vide the endorsement on the application itself for the applicant being impleaded as a party to the appellate proceedings. However, despite the same, the first appellate Court dismissed the application on the ground that the applicant has sought to be impleaded as a necessary party without any pleadings and it cannot be expected that the applicant, who is allegedly the son of the sister of the plaintiff's was not aware of the present proceedings and the application appears to have been filed to prolong the matter. It was also noticed that the suit of the plaintiff-appellants has been dismissed by the trial Court *ex parte* and the plaintiffs are allegedly in possession of the house and their stepmother having been turned out of the house, is living outside.

On notice of the present revision petition, the plaintiff-respondents as well as defendant-respondent, are represented by counsel. Learned counsel for respondent Nos.1 to 3 maintains their stand before this Court that they have no objection in case applicant-petitioner is impleaded as a party at the appellate stage. Learned counsel for the defendant-respondent No.4 has also conceded to the claim of the applicant-petitioner

subject to the caveat that the applicant-petitioner would not lead any fresh evidence and would be bound by the result of the litigation, which was initiated by the plaintiff-respondents.

Heard learned counsel for the parties and with their able assistance perused the record.

From the pleadings of the parties and the conceded position on record before this Court, it is not disputed that Raj Kumar had four children from his first wife, namely, Kusumlata, i.e. the plaintiff-respondents and Anita Rani. It is also not in dispute that Smt. Anita Rani died on 25.03.2006 and is survived by her only son-Himanshu Aggarwal i.e. the applicant-petitioner. It is also conceded that no issue was born from the wedlock of Raj Kumar and Smt. Sunita Rani.

Learned counsel for the petitioner submits that the applicant-petitioner would be satisfied, in case, he is impleaded as a party to the pending proceedings, even if as a defendant-respondent. The said limited prayer is not opposed by the respondents. It is rather submitted by learned counsel for the parties that no objection was given before the first appellate Court as well.

In view of the peculiar facts and circumstances of the case and the consensus arrived at between the parties, the present revision petition is liable to be accepted. In matters of succession, all class one heirs claiming interest therein would be necessary party, even if the plaintiff's claim is based on testamentary deposition. In the case at hand, the applicant-petitioner is claiming interest being heir of a class one heir.

In the light of the above and the factum that the interest of the applicant-petitioner's predecessor-in-interest, namely, Anita Rani (now

deceased) is co-existent with that of the plaintiff-respondents herein, being their real sister from the same parents, the present petition is allowed.

Resultantly, the impugned order dated 25.12.2019 is set aside and the applicant-petitioner is allowed to be impleaded in the appeal, as a defendant-respondent. Accordingly, the applicant-petitioner would file the amended memo of parties in the pending appeal. It is, however, made clear that the applicant-petitioner would not have the right to file a written statement in the present suit or lead any evidence, even in the proceedings before the Court below, the same being at the appellate stage.

Further, keeping in view that the appeal pertains to the year 2015 and on account of interim orders passed in the present petition the appeal could not be heard and disposed of in a timely manner, the first appellate Court is directed to proceed with the appeal and dispose of the same expeditiously, in accordance with law.

The present revision petition is allowed in the aforesaid terms.

(VIKAS SURI)
JUDGE

March 13, 2023
Rajeev (rvs)

Whether speaking/reasoned	Yes
Whether reportable	No