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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: June 01, 2023

Baljeet Singh

....Petitioner

versus

Kuldeep Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Satbir Singh Gill, Advocate,
Ms. Lovepreet Kaur, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside the impugned order dated 08.02.2023 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Sirsa whereby application for impleading LR's of defendant No.3/deceased-Joginder Kaur, was allowed by leaving the daughters of deceased defendant No.3.

2. Averments are that petitioner-plaintiff filed a suit for permanent injunction restraining respondents from interfering and from doing any such act which tantamount to interference and obstacle into use of street/ *Rasta* belonging to petitioner/ plaintiff and also restraining respondents from doing any act, which amounts to interference into exclusive possession of plot in question situated within *lal lakeer* of old Khairpur, near Gali MITC Wali, Hisar Road, Sirsa; and also restraining respondents from doing any mischief amounting to causing valuable loss to plaintiff in any manner, on the basis of evidence of every description oral and documentary.

2.1. During pendency of suit, defendant No.3-Joginder Kaur died. Legal heirs of respondent No.3, namely Gurvinder Singh and Gurpreet Singh filed an application for impleading them as legal heirs of the deceased.

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2.2. Learned trial Court vide impugned order dated 08.02.2023 (Annexure P-5), allowed the aforesaid application.

3. Learned counsel for petitioner-plaintiff contends that Gurwinder Singh and Gurpreet are not the only legal heirs of deceased-respondent No.3/Joginder Kaur, but daughters, namely Gulminder Kaur and Guljinder Kaur are also the legal heirs of deceased. He contends that since alleged Will dated 21.05.2020 was not executed and registered by the deceased, therefore, the same can be challenged by any of the LRs at any stage. Aforesaid daughters of deceased have also not made any statement to the effect that they are not having any objection, in case, aforesaid sons are impleaded as only LRs of respondent No.3-deceased. He also contends that Gurpreet Singh had also not executed any GPA in favour of Gurwinder Singh and had gone foreign country many years ago and have also not come back to India. He contends that respondent No.3 (i)-Gurwinder Singh was impleaded in the suit proceedings by the order of learned lower Court upon an application under Order I Rule 10 CPC filed by him. In the alleged Will, pendency of litigation about suit land was also mentioned.

4. Considering the nature of order being passed, facts and circumstances of the case, issuance of notice to respondents/defendants seems unnecessary and is, therefore, dispensed with.

5. I have heard learned counsel for petitioner and perused the record.

6. Since factual position *qua* deceased-Joginder Kaur having two sons and two daughters is not disputed, but it seems that learned trial Court got swayed with assertions contained in the application seeking impleadment of only sons to the *lis* herein on the ground that deceased-mother had executed a Will *qua* suit land in favour of sons and since daughters were not given any share therefore, they were not necessary party. Be that as it may, trite law it is that a litigant who institutes

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proceedings is the master of *lis* on the principle of *Dominus litis* and is at liberty to implead any of the persons as a party to the *lis* against whom he seeks relief.

7. In the premise, once it was established that there are four legal heirs of the deceased, all of them ought to have been made party since it is the case of the plaintiff that tomorrow any of the other legal heirs may take their claim *qua* which he is seeking relief. It is another matter that after issuance of notice, the daughters may choose not to defend the case, if they so wish, as has been pleaded by the brothers on their behalf that they do not have any interest in the suit land.

8. Consequently, objections of the plaintiff that LR's/ daughters ought to have been impleaded should have been sustained by learned trial Court.

9. As an upshot, the impugned order dated 08.02.2023 (Annexure P-5) is modified to the extent that two daughters of the deceased, namely Gulminder Kaur and Guljinder Kaur would also be impleaded as defendants. Court notice be issued to them. In case, they choose to defend or not respond, as the case may be, learned trial Court shall proceed further.

10. Revision petition is disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

June 01, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No