

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) CR-3209-2022 (O&M)

Manjit Kaur
...Petitioner

VERSUS

Gurnam Singh and another
...Respondents

(ii) CR-1358-2023 (O&M)

Gurnam Singh
...Petitioner

VERSUS

Sukhwinder Singh through LRs
...Respondent

Date of Decision: August 25, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kanish Jindal and Mr.Rishav Jain, Advocates
for the petitioner (in CR-3209-2022) and
for respondents No.1(i) (ii) (in CR-1358-2023).

Mr.Harish Goyal, Advocate,
for the petitioner (in CR-1358-2023) and
for respondents (in CR-3209-2022).

ARCHANA PURI, J.

These are two rival revision petitions filed to assail the order
dated 04.05.2022 passed by learned Court below, on an application under
Order 1 Rule 10 CPC filed by Manjit Kaur.

CR-3209-2022 has been filed by Manjit Kaur to assail the
aforesaid order, vis-a-vis, her impleadment, only to the extent that she has

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been allowed to join the proceedings, at that stage only (i.e. at the stage, existing on 04.05.2022, which is the date of the impugned order).

CR-1358-2023 has been filed by Gurnam Singh, who was plaintiff before the Court below, to challenge the order, with regard to impleadment of Manjit Kaur, as a necessary party, in the suit filed by him.

The essential background facts are as follows:-

That, initially, Gurnam Singh-plaintiff (petitioner of CR-1358-2023) through his attorney had filed a suit for issuance of mandatory injunction to restrain defendant-Sukhwinder Singh, who is real brother of Gurnam Singh, to deliver vacant possession of Kothi, constructed on the land, as detailed in the head-note of the plaint, copy whereof is Annexure P-1.

The plaintiff asserted himself to be owner of the suit property and he is residing in Japan since the year 2008. He also alleged that Sukhwinder Singh-defendant to be having possession of the property, being licensee. As plaintiff was in need of the Kothi, he revoked the licence orally and sought the vacant possession of the Kothi in question and thus, filed the suit.

In the written statement, copy whereof is Annexure P-2, defendant-Sukhwinder Singh, besides taking preliminary objections, on merits also took the plea that he is owner-in-possession of the Kothi in question. In fact, he had purchased the plot with his own funds. He is not having any male or female child. With his service benefits, he had purchased the plot in the name of the plaintiff, who is his younger brother. He raised the Kothi. The defendant along with his wife, is living in the Kothi, in

dispute, from the very date of completion of its construction.

However, during the pendency of the suit, Sukhwinder Singh died and his wife Dalip Kaur was impleaded as his legal heir. However, Dalip Kaur also died, during the pendency of the suit and resultantly, by way of filing of an application under Order 22 Rule 4 CPC, copy whereof is Annexure P-3, Gurnam Singh-plaintiff had sought impleadment of Daljinder Singh, his other brother, thereby, stating about him to have entered into the possession of the disputed property, alleging himself to be legal heir of Sukhwinder Singh. This application was allowed and the Daljinder Singh, was impleaded as defendant No.1(b).

Thereafter, an application under Order 1 Rule 10 CPC was filed by Manjit Kaur, who is wife of Daljinder Singh, who had already been impleaded as defendant No.1(b).

In the aforesaid application, it is asserted that she is in possession of the Kothi in question and residing in the Kothi, along with her family. Therein, she also asserted that Sukhwinder Singh-defendant (since deceased) had adopted her son. But however, the plaintiff had intentionally not made him the legal heir of the defendant. Now, the plaintiff, under the garb of present suit, wants to take forcible possession of the Kothi, for which, the plaintiff has no right. In the application, it was also asserted about the Manjit Kaur to have filed the civil suit against the plaintiff-Gurnam Singh, regarding the Kothi in dispute, which is pending. While claiming herself to be necessary party to the present suit, the said application was filed.

The aforesaid application was allowed vide impugned order and

Manjit Kaur was allowed to join the proceedings, at that stage only.

As culled out from the aforesaid, Daljinder Singh as well as Manjit Kaur are in possession of the suit property. So far as, son of Manjit Kaur, being adopted by Sukhwinder Singh, is concerned and the plaintiff-Gurnam Singh having not impleaded him as LR of Sukhwinder Singh, there is always option available with the LR to join the proceedings, by way of filing an application before the Court concerned. Daljinder Singh, husband of Manjit Kaur has already been impleaded in the present suit, in pursuance of death of Dalip Kaur, wife of Sukhwinder Singh-defendant.

Even, suit had been filed by Manjit Kaur separately, for seeking permanent injunction, vis-a-vis, the suit property, but the same was filed during the pendency of the suit in hand. Therein also, she admitted about herself and her family to be residing in the suit property. That being so, when Daljinder Singh has already been made to join the proceedings, now there is no necessity to implead Manjit Kaur, as defendant. There will be no end to the litigation, if one family living together, keep on asserting their right individually, over the suit property, more particularly, when they are living together.

No doubt, as now submitted by learned counsel for petitioner Manjit Kaur that impleadment of proper or necessary party can be at any stage of the proceedings, either upon or even without any application, on such terms, as they may appear to the Court to be just, but however, for the Court to direct and to add a person as a plaintiff or defendant, it is essential to adjudicate, as to whether the presence of said party is necessary for effective and complete adjudication of the issue, involved in the suit. If a

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person is not found to be proper or necessary party, then the Court does not have the jurisdiction to order his impleadment, against the wishes of the plaintiff.

As already observed aforesaid, when Manjit Kaur and her husband are living together in the suit property, then question of impleadment of Manjit Kaur, as such, does not arise, particularly, when her husband has already stepped into shoes of Dalip Kaur, wife of Sukhwinder Singh-defendant. So far as, son of Manjit Kaur is concerned, it has already been observed aforesaid, if there would be any need to implead the LR, he is a major son and he can always approach the Court, for doing the needful, if there is reasonable ground made out.

However, in the present case, filing of an application under Order 1 Rule 10 CPC, is a smart move, on the part of Manjit Kaur, with the purpose to delay the proceedings. When the controversy, as such, can be adjudicated, in a proper manner, the impleadment of Manjit Kaur, as such, is not essential, as she is neither necessary nor proper party.

In the light of the aforesaid discussion, **CR-1358-2023** filed by Gurnam Singh is allowed and the impugned order dated 04.05.2022 is hereby set aside and resultantly, the application under Order 1 Rule 10 CPC stands dismissed. Consequently, the connected revision petition i.e. **CR-3209-2022** filed by Manjit Kaur, stands dismissed.

August 25, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No