

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6203-2022 (O&M)
Date of decision: 12.04.2023

SANTRO DEVI AND ANR

...Petitioners

VS

SUSHIL KUMAR AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashish Gupta, Advocate,
For the petitioners.

Mr. Ravish Bansal, Advocate,
For respondent No.1.

Service upon respondent No.2 dispensed with vide order
dated 16.01.2023.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 22.08.2022 (Annexure P-5) passed by learned Civil Judge (Junior Division), Faridkot, whereby, an application under Order 1 Rule 10 CPC for impleadment of Devi Rani daughter of Mool Chand as defendant No.3 filed by the petitioner/plaintiffs, was dismissed.

2. Learned counsel for the petitioners submits that petitioner-plaintiffs filed a suit seeking relief of possession of one residential plot measuring 150 sq. yards as detailed in the head note of the suit. Defendant No.1 put in appearance and filed written statement. Evidence of plaintiffs was closed by Court order and thereafter defendants started leading their evidence. Defendants examined three witnesses. When evidence of DW-4 Sushil Kumar i.e. defendant No.1 was being recorded and after his examination in chief, the plaintiff-petitioners filed an application under

Order 1 Rule 10 CPC for impleadment of Devi Rani on the ground that she is the sole surviving legal heir of deceased Mool Chand and the said fact was mentioned in the written statement but due to oversight, the said objection could not be complied with, at that stage and request was made for impleadment. He submits that on account of her non-impleadment, no effective decree could be passed in favour of the petitioner-plaintiffs. However, vide impugned order dated 22.08.2022 (Annexure P-5), learned trial Court dismissed the said application.

3. Learned counsel for respondent No.1 appears and strenuously opposes the petition. He would submit that the said application was filed at a belated stage and in a suit for possession, title is not to be decided.

4. I have heard learned counsel for parties and gone through the case file.

5. What emerges thus is neither the proposed impleadment of defendant No.3 changes the nature of suit nor even otherwise it lies in the mouth of respondent-defendant No.1 to oppose such an impleadment. Since such an objection flies in the face of his own averment in the written statement that the plaintiff ought to have impleaded Devi Rani as defendant No.3.

6. No doubt, for a long interregnum, plaintiffs did not agree with the objection taken by defendant No.1-respondent herein. Eventually when an application was filed to meet the objection of defendant No.1, it is rather intriguing that same is being opposed.

7. Delay in filing impleadment application, no doubt would prolong the further proceedings in trial but since it is the plaintiffs, who would suffer outcome of the delay, therefore, trial Court seems to have

rather over-swayed with the fact that impleadment at belated stage would delay the proceedings.

8. Accordingly, I see no reason as to why instant revision petition should not be allowed. Impugned order is, accordingly, set aside. Application seeking impleadment of Devi Rani daughter of Mool Chand as defendant No.3 is allowed with liberty to file written statement for which only one opportunity will be granted subject to payment of costs of Rs.5000/-to be paid to respondent No.1, which shall be condition precedent, upon service effected and causing appearance pursuant thereto. The revision petition is allowed.

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

(ARUN MONGA)
JUDGE

12.04.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No