

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-776-2023 (O&M)
Date of Decision:-10.04.2024

GURSEWAK SINGH

... Petitioner

Versus

HARDEV SINGH AND ANOTHER

... Respondents

-.-

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Dinesh Mahajan, Advocate
for the petitioner.

Mr. G.S. Sirphikhi, Advocate for respondent No.2.

Respondent No.1 *Exparte* vide order dated 29.03.2023.

RITU TAGORE, J. (Oral)

1. Challenge in this revision is to order dated 19.09.2022 passed by learned Civil Judge (Junior Division), Batala, in Civil Suit No.274-2021 titled as Gursewak Singh vs. Hardev Singh, whereby dismissed the application under Order 1 Rule 10 CPC for impleadment of Jagmohan Singh and Harbans Singh as defendants in the suit.
2. Learned counsel stated that dismissal of petitioner's application under Order 1 Rule 10 CPC, by the learned Trial Court is arbitrary, whereas the presence of proposed defendants (Jagmohan Singh and Harbans Singh) is necessary for the complete and effective adjudication of suit filed by the petitioner against respondents for possession by way of specific performance

of mortgage agreement dated 14.09.2016 and redemption of land measuring 8 kanals along with recovery of mesne profits (Annexure P-1).

3. Learned counsel submits that petitioner filed the application under Order 1 Rule 10 with specific averments that respondents (defendants before the Court) have given the suit land to proposed defendants, thereby created third party rights in the suit land. Learned counsel stated that since the proposed defendants are in possession of the suit land, they are necessary parties in the suit in the context of the relief sought by the petitioner concerning the suit land. It is stated that observation of the learned trial court that petitioner did not provide any evidence such as a settlement deed between the arrayed and proposed defendants is unwarranted. This is because Jagmohan Singh is none other but the son of respondent No.1 . Therefore, under the present circumstances, availability of an inter-se agreement or settlement between respondents would not be feasible. Additionally, it would be a matter of evidence. It is further stated that while learned Trial Court acknowledged that petitioner is a *dominus litus* of his case, but failed to comprehend the facts put forward by the petitioner, which warrant the presence of proposed defendants in the suit. Learned counsel stated that in the absence of the proposed defendants, who are allegedly in possession of the suit land the decree of possession, or execution would not be possible. In support of his contention, referred to **Anil Kumar Singh vs. Shivnath Mishra alia Gadasa Guru 1995(3) SCC 147**, wherein Hon'ble Supreme Court observed that object of Order 1, Rule 10 (2) CPC is to bring on record all persons who are parties to the dispute relating to subject matter, so that dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of litigation.

4. Learned counsel submits that allowing the application would not cause prejudice to respondents. Instead, it would enable the Court to determine and settle all the questions involved in the suit and prevent proliferation of litigation. Based on these submissions, learned counsel prays to set aside the order and allow the application.

5. On the other hand, learned counsel for respondent No.2 submits that learned Trial Court has rightly dismissed the application by concluding that the petitioner presented no supporting material to show that any third party rights have been created in the suit property. Furthermore, it is stated that no cause of action has been shown against the proposed defendants to justify their impleadment. The learned counsel stated that suit is at the final stage of the defendant's evidence, and allowing the application would cause delay, leading to a de-novo trial of the suit. A prayer is made for dismissal of the petition, for lacking merits.

6. I have gone through the paper-book with valuable assistance of counsel for the petitioner and respondent No.2.

7. It is a matter of record, the petitioner has filed suit for possession by way of specific performance of mortgage agreement dated 14.09.2016 and redemption of the land measuring 8 kanals as detailed in the plaint, along with recovery of mesne profits and interest @ 12% per annum from 14.09.2019 till realization (Annexure P-1). Respondents filed the reply and opposed the averments of the petitioner.((Annexure P-2).

8. As evident from paper book, the petitioner filed an application under Order 1 Rule 10, CPC, seeking to implead Jagmohan Singh son of Hardev Swingh and Harbans Singh son of Dalip Singh as defendants by

raising specific pleas that during the pendency of the suit, the contesting respondents gave the suit land to Jagmohan son of defendant No.1 and Harbans for cultivation, and they did so intentionally to create 3rd party rights in the suit land and obstructing the suit proceeding. It is stated that both the defendants are deemed necessary parties (Annexure P-3). In corresponding response (Annexure P-4). contesting respondents simply denied the averments but did not refute that Hardev Singh is son of defendant No.1. They also asked the petitioners to prove their averments strictly, aside from alleging that application has been filed to delay the suit.

9. The object of under Order 1 rule 10(2) CPC is to bring on record all the persons, whose presence would enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. In this regard observations of learned Supreme Court in Anil Kumar Singh's case (supra) is as under:-

“Object of to bring on record all persons who are parties to the dispute relating to the subject matter. So that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.”

10. The petitioner is seeking possession of the suit land from the contesting respondents on the basis of redemption of mortgage agreement, allegedly executed between the parties, interalia alleging a justiciable cause of action against the contesting respondents. However, the petitioner by way of application under Order 1 Rule 10(2) specifically pleaded that during the currency of suit, contesting respondents have given the land for cultivating to proposed respondents, creating third part rights in the suit land. In given

allegations, presence of proposed respondents seems necessary in the context of relief of possession, asked by the petitioner. The cause of action thus stands expanded qua the proposed defendants. In absence of the proposed defendants, decree of possession and execution of decree would become difficult. Further, petitioner is a master of his case he should be allowed to implead the persons, against whom he seeks the relief.

11. The dismissal of application by the learned trial court for non-furnishing of evidence with regard to possession of proposed respondents or any inter- se agreement between the respondents, to the mind of this Court, at this stage. was not justified. It was a matter of trial. The petitioner should have given the opportunity to present evidence oral or documentary to substantiate his version.

12. In view of the discussion and legal position of law as discussed, the impugned order does not withstand judicial scrutiny and liable to be set aside. Accordingly, order dated 19.09.2022 is set aside and application Order 1 Rule 10 CPC, is allowed. It is expected that parties shall cooperate with the Court for prompt disposal of the case.

13. No other point urged.

14. Revision is allowed in above terms.

15. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

10.04.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No