

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CR-1257-2022 (O&M)

Date of Reserved : 08.05.2024.

Date of Pronouncement:17.05.2024.

Gurvansh Singh Chadha

...Petitioner.

Versus

Inderjit Kaur Chadha and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Anandeshwar Gautam, Advocate
for the respondents.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 10.02.2022 (Annexure P6) passed by learned trial Court, vide which the application under Order 1 Rule 10 CPC filed by the petitioner/ plaintiff, was dismissed.

2. The relevant facts for adjudication of the present revision petition are that the petitioner/ plaintiff filed civil suit bearing No.3503 of 2021 against the present respondents with the averments that one property built in the shape of Haweli, having an area of 446 square yards, situated inside Ghee Mandi opposite Gaushala, Tehsil and District Amritsar (suit property) was purchased by Harjeet Singh Chadha i.e. father of the petitioner vide sale deed dated 03.08.2006. It was further alleged that due to

love and affection, father of the petitioner had transferred the ownership right of the suit property in favour of the petitioner vide transfer deed dated 08.08.2019, on the basis of which the petitioner became the exclusive, legal and lawful owner of the suit property and is in continuous possession of the same. It was averred that the respondents, who were relatives of the petitioner, by taking undue advantage of the fact that the petitioner is residing at Delhi most of the time, made attempts to interfere in peaceful possession of the petitioner, resulting in filing of the present suit.

3. Upon notice, respondent No.2 appeared and filed written statement denying the averments made by the petitioner in the plaint alleging that the suit property was in fact part of a total land measuring 2230 square yards owned by one Marwari Dharmarth Society of Katra Ahluwalia, Amritsar. The aforesaid land including the suit property was sold vide different sale deeds on 16.10.1992. It was alleged that 1/5th of the said land measuring 446 square yards was sold in favour of Harbans Kaur Chadha; 1/5th was sold in favour of Delux Leasing Pvt. Ltd.; 1/5th was sold in favour of Chadha Motor Transport Company; 1/5th in favour of Kanwaljit Kaur and Kulbir Kaur and 1/5th in favour of Amritpal Kaur and Baljit Kaur. It was alleged that the aforesaid persons had become co-owners in joint possession of the property by purchasing the entire 2230 square yards of the property. It was alleged that Kulbir Kaur, vide an exchange deed dated 27.06.2006, had transferred her share in favour of Amarjit Singh and Tejinder Singh. Kanwaljit Kaur, Amarjit Singh and Tejinder Singh sold their entire share measuring 446 square yards in favour of Inderpreet Singh Chadha, i.e. the predecessor of the respondents. Inderpreet Singh Chadha has since died on

03.01.2018. Harjeet Singh Chandha i.e. the father of the plaintiff, purchased his 1/5th share from Amritpal Kaur and Baljit Kaur vide sale deed dated 03.08.2006. It was alleged that vide the said sale deed, merely a share in the undivided property had been purchased and as such all the co-owners have been in joint possession of the property including the suit property.

4. Thereafter during pendency of the suit, the petitioner filed two applications, one for seeking amendment of the plaint and the other application had been filed for seeking the impleadment of his father as defendant No.5 to the suit. The application for amendment was allowed by the trial Court and as such the petitioner was allowed to incorporate the factum of partition having been effected inter-se the co-owners.

5. In the application preferred for impleadment of his father Harjeet Singh Chadha as defendant No.5, it has been averred by the petitioner that the Harjeet Singh Chadha had allegedly let out the property in question in favour of M/s Chadha Motor Transport Company and that Harjeet Singh Chadha had been receiving the lease amount in his bank account, so in order to answer the contention of the respondents, it was imperative that Harjeet Singh Chadha be impleaded as defendant No.5 in the suit. Though, no relief was being sought against him, but it was imperative to implead him as a defendant, being a proper party thereof.

6. Reply to the said application was filed by respondent No.2. The said application filed under Order 1 Rule 10 CPC was dismissed by the trial Court vide the impugned order dated 10.02.2022. Hence, the petitioner has knocked the doors of this Court by way of filing of the present revision petition.

7. Learned counsel for the revision petitioner has contended that the matter has not been appreciated by the trial Court in its right perspective. The trial Court has failed to appreciate that the respondents had alleged that Harjeet Singh Chadha had let out the property in question in favour of M/s Chadha Motor Transport Company and that Harjeet Singh Chadha had been receiving the lease amount in his bank account. The petitioner does not admit the said fact but to answer the said contention of the respondents, it was imperative that Harjeet Singh Chadha be impleaded as defendant No.5 in the suit, being a proper party. He has also argued that the impugned order has been rendered in teeth of the principal *dominus litus* and is not sustainable. While relying upon **Aliji Mononji and Co. Vs. Lalji Mayji, 1996 (3) R.C.R. (Civil) 537; Krishan Vs. Bharat Kumar and another, 2015(9) R.C.R. (Civil) 156** and **Phulgen and others Vs. Vinay Kumar Tiwari, 2014(11) R.C.R. (Civil) 1675**, he has contended that the impugned order being illegal, arbitrary, whimsical and perverse, deserves to be set aside.

8. On the other hand, it has been contended by learned counsel for the respondents that the present suit is a simpliciter suit for permanent injunction and cannot be converted into a title suit by allowing the instant application. Harjeet Singh Chadha is neither a necessary nor a proper party to be impleaded in this case and the said application is only a delaying tactics for delaying the disposal of the instant case. He has urged that the application filed under Order 1 Rule 10 CPC by the petitioner has been rightly dismissed by the trial Court. In this context he has relied upon **E. Vanaroja and others Vs. S.K. Krishnan and anothers, 2011(2) MadWN**

(Civil) 274; Paneerselvam Vs. Ramalingam, 2020(2) CTC 65 and Vidur Impex and Traders Pvt. Ltd. and others Vs. Tosh Apartments Pvt. Ltd and others, 2012 (4) R.C.R. (Civil) 308.

9. I have heard learned counsel for the parties and have gone through the relevant record.

10. Order 1 Rule 10(2) CPC reads as follows:-

“Court may strike out or add parties- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

11. The Hon'ble Apex Court in **Vidur Impex's** case (supra) laid down broad principles which should govern disposal of an application for impleading LR's, which are as under:-

“36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. *A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.*

3. *A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*

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

5. *In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.*

6. *However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”*

12. In the light of the above, now it is to be considered that whether Harjeet Singh Chadha is required to be impleaded as defendant No.5 in the instant suit.

13. The trial Court had dismissed the application on the ground that the present application has been moved by the plaintiff as he wants to dispute and rebut the averments of the written statement and Harjeet Singh Chadha is neither a proper party nor a necessary party.

14. It is the trite law that insofar as impleading of parties to the suit is concerned, he has to be a necessary party or a proper party to the

proceedings. Necessary party is one without whom no effective order can be made. Proper party is one whose presence is necessary for a complete and final decision. Unless these requirements are satisfied, a person cannot be added as a party to a suit.

15. The facts of the present case shows that as per the averments of the plaint, the plaintiff got title in question through his father namely, Harjeet Singh Chadha, who was exclusive, legal and lawful owner of the suit property. On the contrary, the respondents/ defendants have contended that Harjeet Singh Chadha was not in exclusive possession of the suit property and he had let out the property in question in favour of M/s Chadha Motor Transport Company at a lease money of Rs.6,000/- per annum and Harjeet Singh Chadha was receiving the aforesaid amount in his bank account and thus he had created tenancy of the suit property in respect of M/s Chadha Motor Transport Company Private Limited. The plaintiff/petitioner wants to add Harjeet Singh Chadha as defendant No.5 to contest and rebut the averments of the written statement.

16. It will be appropriate to refer to the judgment in case **Pichaimani Vs. C. Selvarani and another, 2007(1) CRC 304** and the relevant portion of the judgment is extracted below:-

“The party can be impleaded only when there is a cause of action against him and where his presence is necessary for complete and effectual adjudication of the dispute involved in the suit. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made, but whose presence is necessary

for a complete and final decision on the quesiton involved in the proceeding. Furthermore, a person may be added in a suit only if he or she ought to have been joined as plaintiff or defendant, and is not joined so and affected. A party to the litigation is not entitled to use the provisions of Order 1, Rule 10 C.P.C. to implead a person just for the purpose of eliciting a statement from him in whatever form so as to make use of the same as a piece of evidence.”

17. In the instant case also the petitioner has not made out a case that Harjeet Singh Chadha is proper and necessary party for adjudicating the suit between the petitioner and the respondents. A person having relevant evidence may be a necessary witness and he cannot be termed as a proper party. The material placed on record indicates that Harjeet Singh Chadha at the best could only be a witness in the case in order to rebut the defence taken by the respondents. The trial Court has also categorically found that the petitioner can always call and examine Harjeet Singh Chadha as a witness but he cannot be termed as a necessary or proper party so as to implead him as a defendant in the instant suit.

18. So far as, the case law referred by learned counsel for the petitioner is concerned, the same is of no help to him, the same being distinguishable from the facts of the instant case.

19. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

20. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

17.05.2024.
komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No