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

CR-7852-2023 (O&M)

Date of decision: 26.09.2024

Jaspal Singh

...Petitioner

Versus

Pritam Kaur Mann and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate and
Ms. Shruti Singla, Advocate for the petitioner.

Mr. Sunil Tiwari, Advocate for respondent No.1
(Through Video Conferencing)

Mr. Aayush Gupta, Advocate for proforma respondents.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 09.11.2023 passed by the Civil Judge (Junior Division), Ludhiana, whereby an application filed under Order 1 Rule 10 of CPC by respondent No.1/proposed defendant namely Pritam Kaur for impleading her as a party to the Civil Suit No.43473 of 2013, has been allowed.

2. Learned Senior Counsel for the petitioner has submitted that in the present case, the petitioner had filed a suit for declaration to the



effect that he was the exclusive owner in possession of House No.B-XX-3252/2, Gurdev Nagar, Ludhiana, measuring 1035 square yards comprised in khasra No.249 in the revenue estate of Taraf Karabara, Hadbast No.161, Tehsil West, District Ludhiana on the basis of two sale deeds both dated 18.01.1989. It is submitted that other prayers were also made in the said suit and no relief was sought against the respondent No.1. It is further submitted that in the head note of the plaint, it has specifically been mentioned that on the western side, there was house which was built on plot No.31 and was belonging to respondent No.1 and one Sant Kaur to the extent of 135 feet and that the dispute in the instant case did not pertain to the said plot and was with respect to plot No.32 which was comprised in khasra No.249. It is submitted that the stand of the plaintiff was that one Choor Singh, through his attorney Partap Singh, had sold the suit property to the plaintiff (petitioner) by virtue of two sale deeds and he had become owner by virtue of the same and that the Will dated 07.12.1986 propounded by defendant No.2-Arjan Singh was a fabricated document and even judgment and decree dated 11.02.1994 relied upon by the said Arjan Singh was also illegal, null and void and not binding on the interest of the plaintiff.

3. It is further submitted that in the instant civil suit, written statement had been filed and after framing of the issues, the entire evidence of the plaintiff has been led and even the defence evidence has been closed and it was at the stage of rebuttal evidence and arguments that the application dated 15.09.2023 was filed by respondent No.1 for



being impleaded as a party. It is submitted that although, the said application was opposed but however, by virtue of the impugned order dated 09.11.2023, the same had been allowed and at the fag end of the trial, respondent No.1 had been ordered to be impleaded as a party (defendant). It is stated that the impugned order is absolutely illegal and deserves to be set aside on several grounds.

4. The first ground which has been raised by learned Senior Counsel for the petitioner is that it is the petitioner-plaintiff who is the dominus litis and he cannot be forced to make any person a party or to contest the case against a person whom he does not wish to. The second ground raised by learned Senior Counsel for the petitioner is that no relief was being claimed against Pritam Kaur Mann in the entire case and thus, she is neither a necessary nor a proper party. The third ground raised by learned Senior Counsel for the petitioner is that the case is at the fag end and thus, allowing the said application filed under Order 1 Rule 10 CPC would result in a de-novo trial and would delay the proceedings with respect to the suit which had been instituted in the year 2012. The fourth ground raised is for setting aside of the impugned order to the effect that the trial Court had perversely observed that the plaintiff was in illegal possession of some land which was under the ownership of respondent No.1 by relying upon the report of the Local Commissioner. It is argued that the said observation is perverse as a perusal of the report of the Local Commissioner (Annexure P-5) would show that it was the case of the plaintiff/petitioner that some encroachment had been made by the



neighbourers on his land and it was nowhere observed in the said report that it was the plaintiff who had occupied the land of respondent No.1. It is further submitted that one civil suit (Annexure P-11) was filed by one Amit Chadha in which Pritam Kaur Mann was defendant No.1 and defendant Nos.12 to 15 in the present case were defendant Nos.4 to 7 in the said suit and in the same, written statement was filed by said Pritam Kaur Mann-respondent No.1 and a perusal of the said written statement (Annexure P-12), more so para 1 on merits, would show that it was the stand of respondent No.1 that she was the owner of the property in question in the said suit but had further stated that the property was in illegal possession of defendant Nos.4 to 7 and it was not her case that it was the present plaintiff who was in illegal possession of any land owned by her. It is submitted that although, not admitting but even assuming that as per case of respondent No.1, if the plaintiff-petitioner was in possession of some part of land owned by respondent No.1, then it was for respondent No.1 to institute a suit for possession against him and respondent No.1 who was claiming herself to be owner with respect to khasra No.248, cannot be made a party in a suit which pertains to khasra No.249. It is submitted that the application (Annexure P-8) had been moved on 15.09.2023 whereas a perusal of the record would show that respondent No.1 was well within her knowledge about the pendency of the suit even prior to the said date. In this regard, reference has been made to the application (Annexure P-10) which is the application for discharge filed by the petitioner under Section 245 of Cr.P.C. in FIR



No.25 dated 04.12.2014 registered under Sections 420, 465, 467, 468, 471, 448, 120-B of the Indian Penal Code, 1860 at Police Station NRI, District Ludhiana by respondent No.1 and in the said application, specific reference has been made to the fact that the present civil suit is pending and thus, the present application has been filed only to delay the proceedings. In support of his arguments, learned Senior counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case titled as **Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others**, reported as **(2020)13 Supreme Court Cases 773**.

5. On the other hand, learned counsel appearing on behalf of respondent No.1 has opposed the present revision petition and has submitted that the impugned order has been legally passed and the present revision petition deserves to be dismissed. It is stated that a perusal of the plaint would show that it had been pleaded by the petitioner that he had not got the mutation entered in his favour in the revenue record even after the execution of the sale deed and thus, the name of Choor Singh continued to be reflected as owner thereof. It is argued that since, the mutation has not been sanctioned in favour of the petitioner, thus, the declaration sought in the instant suit cannot be granted in favour of the petitioner. It is further submitted that in fact, the property which is owned by respondent No.1 in khasra No.248 has been encroached upon by the plaintiff and other persons and the petitioner and other persons were in illegal possession of the said property. It is submitted that respondent No.1 is denying the right of the plaintiff over



the property in question and thus, has a right to become a party.

6. This Court has heard learned Senior counsel for the petitioner and learned counsel appearing on behalf of respondent No.1 and has perused the paper book and finds that the impugned order is illegal and deserves to be set aside and the present revision petition being meritorious, deserves to be allowed for the following reasons.

7. It is not in dispute that the petitioner-plaintiff had filed civil suit No.18 dated 13.01.2012 against 21 defendants in which several prayers were made, out of which the primary prayers which were made are reproduced as under:-

“Suit for declaration to the effect that the plaintiff is the exclusive owner in possession of House No.B-XX-3252/2, Gurdev Nagar, Ludhiana, measuring 1035 sq. yards, which has been shown as red in the site plan attached and bounded as under:-

East: House No.3252/1, built on plot No.33 belonging to Harpreet Singh and Harshmeet Singh, to the extent of 135'

West: House No.3252, built on Plot No.31, belonging to Pritam Kaur and Sant Kaur, to the extent of 135'.

North: Road 30' wide, to the extent of 69'

South: House of Sohan Singh Anand and Remaining property of Jaspal Singh, plaintiff, to the extent of 69'

comprised in Khasra No.249 Revenue Estate of Taraf Karabara, Hadbast No.161, Tehsil West, District Ludhiana, on the basis of two sale deeds dt.18.1.1989 and 18.1.1989, registered at Wasika no.16913 dated 18.1.1989 and Wasika no.16943 dated 19.1.1989, respectively;

Suit for declaration that Choor Singh son of Bhangah



Singh remained alive uptill 31.3.2009 and that he was survived by Dalip Singh Sidhu, Dr.Daljit Singh Sidhu, sons and daughter Manjit Kaur Sidhu, defendants no.19 to 21 and not by alleged Santa Singh;

And

Suit for declaration that the alleged Will dated 07.12.1986 being propounded to have been executed by Choor Singh s/o Shri Bhanga Singh is forged and fabricated document and that it was never executed by Choor Singh s/o Bhanga Singh, r/o 1, Coldstream Avenue, Singapore 459585 during his life time in regard to the suit property in favour of any person

And

Suit for declaration that alleged judgment and decree dt.11.2.1994 obtained in Civil Suit No.312 of 1993, titled as "Arjan Singh s/o Santa Singh" is null and void and also is the result of fraud, impersonation and is not binding upon the plaintiff in any manner whatsoever"

8. A perusal of the above prayer clause would show that the plaintiff-petitioner was seeking exclusive ownership and possession of house No.B-XX-3252/2 which was stated to be comprised in khasra No.249 in District Ludhiana and the basis of the said claim were two sale deeds both dated 18.01.1989. Other prayers had also been made in the said suit which included seeking declaration with respect to sale deeds subsequently executed by Arjan Singh-defendant No.2 and other defendants. It could not be disputed that in the entire plaint, no relief was sought against respondent No.1-Pritam Kaur Mann. The only reference to Pritam Kaur Mann was coming in the description of the boundary while



defining the house in question and while defining the said boundary and it has been fairly stated by the learned Senior counsel for the petitioner that towards western side is house which is built on plot No.31 and belongs to Pritam Kaur and Sant Kaur to the extent of 135 feet.

9. It would be relevant to note that as is apparent from the application dated 15.09.2023 (Annexure P-8) filed by respondent No.1 under order 1 Rule 10 for becoming a party, respondent No.1 was claiming ownership with respect to khasra No.248 and not with respect to khasra No.249 regarding which the instant suit had been filed. The dispute in the suit which had been filed by the plaintiff is with respect to the ownership of the property which was initially owned by Choor Singh and was bearing plot No.32 and the plaintiff was claiming the said property by virtue of two sale deeds dated 18.01.1989 executed by Choor Singh through his attorney Partap Singh, whereas the contesting defendants in the said suit were claiming the said property through alleged Will dated 07.12.1986 allegedly executed by Choor Singh in favour of Arjan Singh and also on the basis of judgment and decree dated 11.02.1994 in favour of Arjan Singh in a suit filed by Arjan Singh against one Santa Singh who was alleged to be the son of the said Choor Singh. It is not disputed that respondent No.1 has nothing to do with the said dispute as she is neither claiming property through Choor Singh nor is there any document executed by Choor Singh in her favour. In the present case, written statement was filed by the defendants, entire plaintiff evidence was completed and the evidence of the defendants was also



completed and the case was adjourned to 06.09.2023 for rebuttal evidence and for final arguments. Zimni order dated 04.09.2023 in the said regard is reproduced hereinbelow:-

*“Present: Sh.Stevon Soni, ld.counsel for respondent/plaintiff
Sh.Varinder Bhardwaj, ld.counsel for def.no.3
Sh.A.C.Gupta, ld.counsel for applicants/defno.12 to 15.
Defendants no.1,2 & 4 to 9, 11, 17 to 21 exparte.
Defendant no.10, 14 and 16 stated to be died.
Arguments heard. Vide my separate order of even date,
application moved by applicant/plaintiff under Order 6 Rule
17 CPC for amendment of written statement stands disposed
off/dismissed, as detailed therein. **Now case stands
adjourned to 06.09.2023 for rebuttal evidence if any,
otherwise for final arguments.**
Pronounced in open Court : (Nirmala Devi) PCS,
Date : 04.09.2023 Civil Judge (Jr.Division),
Ludhiana.”*

10. It is at that stage that respondent No.1 had moved an application dated 15.09.2023 (Annexure P-8) for being impleaded as a party and in the said application, it had been stated that the land measuring 1 kanal 13 marlas was purchased by Sh. Nikka Singh vide sale deed dated 28.03.1953 comprised in khasra No.248 and the said Pritam Kaur Mann was granddaughter of Nikka Singh and Smt. Santo Kaur was daughter-in-law of Nikka Singh and in their absence, plaintiff and other defendants had illegally trespassed into the land of respondent No.1 and Santo Kaur which was comprised in khasra No.248. A detailed reply was filed by the petitioner to the said application and it was stated that the



said application was not maintainable as the case was of the year 2012 and was an old action plan case and was at the final stage, when the said application was moved to delay the proceedings. It was stated that in case such application is allowed then the same would amount to a de-novo trial and it was also averred that no possession was being sought or claimed in the present suit and only dispute in the instant suit was with respect to title of the plaintiff in khasra No.249, being traced from Choor Singh and the illegal mutations which had been got sanctioned by defendant Nos.12 to 15 in their names in khasra No.249. It was further stated that the plaintiff was not seeking any relief against respondent No.1 and respondent No.1 had no right or interest in khasra No.249 as it was her own case that she was owner of khasra No.248 and that in case, it was the case of respondent No.1 that some other person was in illegal possession of land owned by her then she could always file a separate suit for possession. It was further averred that the initial demarcation report which had been relied upon by respondent No.1 was set aside in appeal by the Collector and it was further averred that respondent No.1 was throughout aware about the suit which fact is apparent from the application for discharge dated 05.02.2019 (Annexure P-10) filed by the petitioner in FIR No.25 dated 04.12.2014 as well as the fact that the demarcation application was being contested between the petitioner and said Pritam Kaur Mann. It was further stated that there was no question of respondent No.1 being made a party when relief was not sought against her and at any rate, the decree would only bind the parties and thus, the



application moved by respondent No.1 for becoming a party was mala fide and was only meant to delay the proceedings. The trial Court vide impugned order dated 09.11.2023 had illegally allowed the application for impleadment by observing that as per the case of respondent No.1, the petitioner-plaintiff and defendants had illegally possessed the property owned by her and the said fact was apparent from the report of the Local Commissioner. Reliance was also placed upon the previous suit for injunction filed by the plaintiff against respondent No.1 which was subsequently withdrawn and on the basis of the said observations, the application for impleadment was allowed. The said order is illegal and deserves to be set aside.

11. In the present case, it is not in dispute that in the suit, no relief is being claimed against respondent No.1. It is the petitioner who is the plaintiff and who is the dominus litis and the petitioner cannot be forced to add party against whom he does not wish to proceed, more so when no relief is being claimed against the said person. The Hon'ble Supreme Court in the case of ***Gurmit Singh Bhatia*** (Supra) had clearly held that the plaintiff cannot be forced to add party against whom he does not wish to contest. The Hon'ble Supreme Court in the case of ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and others***, reported as **(2010) 7 SCC 417**, had observed that merely the fact that a person is likely to secure a right/interest in a suit property after the suit has been decided against the plaintiff would not make such person a necessary party or a proper party



to a suit for specific performance. It is thus, a matter of settled law that being the dominus litis, it is the right of the plaintiff to institute the case against the party against whom he wishes to contest and a person who is neither a necessary nor a proper party and against whom no relief is being claimed is not to be made a party. The lis in the present case was with respect to the title of the land comprised in khasra No.249 and with respect to the property which was owned by Choor Singh and various parties were raising their claims to the same and the entire evidence of the plaintiff and defendant has been led and the case was for rebuttal evidence and final arguments when the application (Annexure P-8) was filed and in case respondent No.1 is ordered to be impleaded as a party, then the same would result in a de-novo trial and would adversely impact the proceedings which were initiated way back in the year 2012. Moreover, respondent No.1 was claiming rights with respect to khasra No.248 and apparently, was raising a plea of some encroachment being made and thus, in case respondent No.1 is impleaded as a party, then completely different issues than the issues which have been framed in the present case, would have to be adjudicated by the Court.

12. Reliance sought to be placed upon the report of the Local Commissioner by the trial Court to state that the plaintiff is in illegal possession is absolutely perverse inasmuch as a perusal of the report of the Local Commissioner (Annexure P-5) would show that it has nowhere been observed that the plaintiff was in illegal occupation or had encroached upon the land of respondent No.1 and rather it had come in



the said report that it was the plaintiff who had stated that there was some encroachment by the neighbourers. Moreover, it would be relevant to note that one Amit Chadha had filed a suit (Annexure P-11) against respondent No.1-Pritam Kaur Mann and also against defendant No.12 to 15 in the present case who were shown as defendant Nos.4 to 7. The said suit was with respect to specific performance of the agreement dated 01.06.2011 with respect to the property comprised in khasra No.248. Relevant portion of the said suit is reproduced hereinbelow:-

“Amit Chadha son of Shri Sudesh Pal Chadha r/o B-XX-6395, Sunil Park Jassain Road, Haibowal Kalan, Ludhiana.

Plaintiff

Versus

1. Pritam Kaur Mann do Ajit Singh s/o Nikka Singh, r/o 29, Harbourtown Crescent, Brampton, Ontario, Canada L7A 2Y8.

2. Sant Kaur alias Santo Kaur widow of Late Shri Dhanjit Singh alias Tanjit Singh s/o Nikka Singh, r/o 52 Jalan Bee Eng Satu Taman Taynton View 56000 Cheras, Kuala Lumpur, Malaysia:

(through their attorney Raj Singh Mann son of Niranjana Singh, r/o Village Ghuman Kalan, Tehsil Talwandi Sabo District Bathinda).

3. Raj Singh Mann son of Niranjana Singh, r/o Village Ghuman Kalan, Tehsil Talwandi Sabo District Bathinda.

4. Satpal Arora son of Shri Harbans Lal

5. Smt. Nirmala Kumari wife of Satpal Arora

6. Madan Mohan son of Harbans Lal

7. Smt. Bimla Rani w/o Madan Mohan

All residents of H. No. 3252/A. Street No. 5. Gurdev Nagar,



Ludhiana.

*Suit for possession by way of specific performance of the agreement **dated 01.06.2011** of property measuring 1K-13M. bearing Municipal No. B.XX.3252, Abadi Gudev Nagar. **comprised in Khasra No. 248**, Khata No. 1244/1384 as per Jamabandi for the year 2005-06, situated at village Taraf Karabara, Tehsil Ludhiana West, District Ludhiana, as shown red in the site plan attached and bound as under:*

East: Plot No. 3252/2, Khasra No. 249, belonging to Jaspal Singh

West: Plot No. 3252/A, Khasra NO. 247, belonging to Madan Mohan

North: Road 30' wide

South: House of O.P. Ghai

On payment of balance sale consideration of Rs.95,00,00/-.”

13. A perusal of the same would show that in the said suit, it had been specifically stated that towards the east was the plot belonging to the present petitioner which was comprised in khasra No.249. In the said suit, joint written statement had been filed on behalf of respondent Nos.1 to 3 therein which included Pritam Kaur Mann (respondent No.1 in the present case) and in para 1 of the said written statement on merits, it had been stated that defendant Nos.4 to 7 therein i.e. defendant No.12 to 15 herein were in illegal possession of the property owned by respondent No.1. Relevant portion of the said written statement is reproduced hereinbelow:-

“AMIT CHADHA

VERSUS

PRITAM KAUR MANN AND OTHERS



In Re: Civil Suit

**WRITTEN STATEMENT ON BEHALF OF
DEFENDANT NO.1 TO 3**

xxx xxx

On merits

1. *That para No. 1 of the plaint is admitted to the extent that defendants No 1 and 2 are the owners of the property in suit, but it is absolutely wrong and the same is denied that they represented that they are in possession of the property in suit, as the property was already in illegal possession of defendants No 4 to 7. It is also correct that defendants No 1 and 2 appointed defendant No 3 as their attorney, who entered into an agreement to sell dated 01.06.2011 with the plaintiff for the sale of the property in suit for Rs 1,15,00,000/-. Terms and conditions of the agreement is a matter of record, which are now of no concern, as the agreement already stands, cancelled and amount stands forfeited and true position has been explained in the preliminary objections of this written statement, which may be read as part of reply to this para as well.”*

14. It is, thus apparent that the observations made by the trial Court to the effect that the plaintiff was in illegal possession of the suit property, are not prima facie established. Even in case, the plea of respondent No.1 to the effect that plaintiff and other defendants had illegally trespassed into the land of respondent No.1 comprised in khasra No.248 was taken to be true on its face value, then also it is respondent No.1, who had to file a separate suit for possession and cause of action for the same would be completely different from the cause of action



which is there in the present case. At any rate, respondent No.1 by becoming a defendant in the present case would not be able to seek the relief of possession and would only cause delay in the proceedings.

15. This Court is surprised that respondent No.1 has chosen to become a party in the present suit instead of filing her own suit for possession in spite of the fact that no relief is being sought against the said respondent No.1 more so when it is settled law that a decree passed in favour of the plaintiff in which a particular person is not a party would not be binding on the said person. The application for impleadment is completely misconceived and deserves to be outrightly rejected. Reference to the earlier suit for injunction filed by the plaintiff against respondent No.1 is also irrelevant for the purpose of determining whether respondent No.1 is a necessary or proper party, to be impleaded in the present case.

16. Learned counsel for respondent No.1 has attempted to argue that the suit of the plaintiff as has been filed, does not deserve to be decreed. The said argument raised by learned counsel for respondent No.1 is meritless and deserves to be rejected. At the stage of considering an application under Order 1 Rule 10 CPC, merits of the suit are not to be taken into consideration and the trial Court would finally adjudicate the suit on the basis of the pleadings and evidence before the Court. Moreover, the question as to whether there was no mutation sanctioned in favour of the plaintiff after the sale deeds had been executed in his favour and as to whether the plaintiff could claim ownership on the basis of the



sale deeds even without there being any mutation in this regard are all issues which would be decided by the trial Court and the same does not call for allowing an application filed under Order 1 Rule 10 CPC by a person against whom no relief is sought. Accordingly, the impugned order being illegal deserves to be set aside.

17. Keeping in view the abovesaid facts and circumstances, the present revision petition is allowed and impugned order dated 09.11.2023 is set aside and the application filed by respondent No.1 for being impleaded as a party is dismissed.

18. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

26.09.2024
Pawan

(VIKAS BAHL)
JUDGE

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