

(1996) 07 P&H CK 0131

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 2471 of 1995 in Civil Writ Petition No. 8811 of 1993

Harcharan Singh and another

APPELLANT

Vs

Financial Commissioner, Revenue, Punjab Chandigarh and others

RESPONDENT

Date of Decision : 29-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)
Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 52

Citation : AIR 1997 P&H 40 : (1996) 3 RCR(Civil) 593

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : B.S. Bhasaur and S.S. Rangi, K.S. Cheema, for the Appellant; R.K. Gupta and J.S. Mann, for the Respondent

Judgement

1. This order of mine disposes of G.M. No. 2471 of 1995 in C.W.P. No. 8811 of 1993 filed under Order 1, Rule 10, C.P.C. by Sarvashri Sudagar Singh, Shingara Singh and Balwinder Singh sons of Gurdev Singh; residents of village Uppal Kheri, Tehsil Malerkotla, containing the prayer that they may be added as co-respondents in the above Civil Writ Petition, titled Harcharan Singh v. The Financial Commissioner, Revenue, Punjab.

2. It has been averred in the application dated 27-2-1995 that the applicants had purchased land measuring 13 Bighas, 15 Biswas comprised in Khewat No. 106/233, Khasra Nos. 999/359, 357 (6-5), 358 (6-5), Kitta (3) Area 13-15 Bigha from Kulwinder Singh son of Harcharan Singh, writ petitioner No. 2, as this land was owned and possessed by him. He executed sale deed in favour of the applicants on 10-11-1989 and it was registered with the Sub-Registrar at Malerkotla on 15-11-1989 for a sum of Rs. 86,000/-. Said Kulwinder Singh also handed over the possession of the land mentioned in the sale deed to the present applicants. The applicants alleged that the writ petitioners Harcharan

Singh and Kulwinder Singh are colluding with each other, and they were fully aware that the present applicants have become the owner and in possession of the land sold by Kulwinder Singh petitioner, but in spite of that the petitioners filed the writ petition without joining the applicants as co-respondents. It is further averred that since the applicants have become the co-sharers, therefore, in order to safeguard their interests, they are the necessary parties in the writ petition, so that the matter may be finally and effectually adjudicated. Status quo order has been passed in the writ petition and for this reason the applicants are not entered in the Khasra girdawaries in spite of the fact that they are in possession of the land purchased by them in pursuance of the sale deed. Even the mutation on the basis of the sale deed executed by Kulwinder Singh has not been entered in their favour. The non-impleadment of the applicants would affect their rights, especially when Kulwinder Singh and his father Harcharan Singh are bent upon harming their interests.

3. Notice of the application was given to the respondents/writ petitioners, who filed the reply and denied the allegations. According to the respondents the applicants had no right to become parties to the litigation, as the litigation between the co-sharers was going on for the last 15 years and the applicants had purchased the property with open eyes. The writ petitioners admit that the applicants had purchased some parcel of the land from Kulwinder Singh petitioner but their purchase is during the pendency of the litigation and as such they are bound by the principles of lis pendens. The litigation regarding the land started 15 years back, whereas the applicants purchased some portion of the land about 7 years back. According to the writ petitioners, the applicants are neither the necessary parties nor they are the proper parties, rather they would be bound by the result of the litigation. Separate reply was also filed by respondent No. 5 who stated that the present application under Order 1, Rule 10, C.P.C. was not legally maintainable as it has been filed with a mala fide intention to harass the private respondents and to delay the disposal of the writ petition. The present applicants alleged themselves to be the successor-in-interest of Kulwinder Singh writ petitioner and as such they cannot have better right than that of petitioner No. 2. The sale deed relied upon by the applicants was without any authority and was in violation of the stay order. The applicants are neither the owners nor in possession of the suit land and as such they have no interest. They are neither necessary nor the proper parties.

4. I have heard Shri B.S. Bhasaur, Advocate, on behalf of the applicants, Shri K.S. Cheema, Advocate, on behalf of the writ petitioners, Shri R.K. Gupta, Advocate, on behalf of respondent No. 5, and Shri J.S. Mann, Advocate, on behalf of respondent No. 6, and with their assistance have gone through the record of this case.

5. In order to determine the controversy involved in the application under Order 1; Rule 10, C.P.C., it will be necessary for me to briefly make a mention about the writ petition. Sarvashri Harcharan Singh and Kulwinder Singh filed a writ

petition under Article 226/227 of the Constitution of India for issuance of the writ in the nature of certiorari quashing the impugned order's dated 11-5-1993, 16-6-1980, 28-1-1986 and 4-10-1985 passed by the different revenue authorities and for the upholding of the order dated 19-4-1988 (Annexure P2). Also directions were sought in the writ petition against respondent No. 4, i.e. the Assistant Collector Ist Grade, Malerkotla, to give effect to the partition and the main plea of the writ petitioners is that the said orders had been passed in violation of the revenue laws. I need not to divulge the detailed pleadings of Sarvshri Harcharan Singh and Kulwinder Singh in C.W.P. No. 8811 of 1993.

6. Order 1, Rule 10(2), C.P.C. lays down that 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 adjudicate upon and settle all the questions involved in the suit be added. The strict principles of Order 1, Rule 10, C.P.C. may not be applicable to the writ proceedings but the principles in general of this provision can be made applicable and the guideline to the Court is that whether the presence of a particular person is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions which were involved in the writ petition. The case set up by the applicants is that they purchased some portion of the land belonging to Kulwinder Singh; meaning thereby that they stepped into the shoes of Kulwinder Singh and they will derive all the right, title and interest in the land purchased by them from Kulwinder Singh. The doubt of the applicants is that Harcharan Singh and Kulwinder Singh are colluding with each other, but prima facie there is no substance in this allegation of the applicants because these two persons Harcharan Singh and Kulwinder Singh, who are father and son respectively, jointly Filed C.W.P. No. 8811 of 1993. The other fear of the applicants is that since they had purchased the specific Khasra numbers from Kulwinder Singh and in case they are not made parties to the writ petition, it is just possible that father and son may join hands together and inferior quality of land may come to their share. This submission raised by the learned counsel for the applicants also does not hold any water because the plea raised by the learned counsel is beyond the controversy involved in the main writ petition. I fail to understand how the interests of the present applicants are likely to be affected since they have purchased specific Khasra numbers from Kulwinder Singh, who must be in possession of the same at the time of the sale deed. A litigant is the master of his cause of action and the option lies with him to implead a particular person as a party to the litigation or not. A person cannot be impleaded as a party simply on the ground that his presence is necessary in order to avoid multiplicity of litigation and at the most the case of the applicants is that they claim interest in the property, subject-matter of partition, even then it does not become a valid ground to implead them

as parties. Since the applicants have derived interest through Kulwinder Singh, any decision of the revenue authorities effecting the rights of Kulwinder Singh, would be binding upon the present applicants. The underlying idea under Order 1, Rule 10(2), C.P.C., is whether the presence of an individual is necessary to effectually and finally determine the rights of that party, or not. If the controversy raised by the applicants is different than the one involved in the suit, such applicants do not become either necessary or the proper parties.

7. Learned counsel for the respondents have placed reliance on *Hazura Singh v. Sukhdev Singh*, 1996 PLJ 37 where it was held that the essence for being made a party in a suit is either the party should be necessary or a proper party in order to determine the subject-matter of the suit affectively. There is no gainsaying that necessary party as observed by a catena of authorities is the one, in whose presence the suit can be decided either effectively or no relief can be granted to the plaintiff. The proper party is the one whose presence is considered to be proper in order to provide effective relief to the plaintiff and for avoiding multiplicity of litigation, i.e. for shortening the litigation. Proper party is one whose presence is considered appropriate for effective decision of case, though no relief may have been claimed against him. In the present case even without the joining of the present applicants in the main writ petition would determine the subject-matter of the writ petition effectively. The writ petitioners have not claimed any relief against the present applicants, who are bound by the rights and obligations of their vendor Kulwinder Singh. In this very authority it was laid down that the plaintiff (writ petitioner) is the dominus litus. No person can be impleaded unless he is necessary or proper party to the lis to get his rights determined in the suit of another party. In *Pranakrushna and Others Vs. Umakanta Panda and Others*, , it was held as follows (paras 8 and 9);--

"Under the provision of R. 10(2) of O. 1, the Court may add the name of any person to the suit who ought to have been joined, either as plaintiff or defendant, or whose presence before the Court is necessary. In a suit for declaration of title a transferee from the defendant pendente lite is neither a necessary nor a proper party inasmuch as he would be bound by the decree in the suit in view of the principle contained in S. 52 of the T.P. Act. The intervenors could not have been added as parties to the suit in the beginning. In the circumstances, it cannot be said that the presence of the intervenors was necessary to adjudicate upon and settle the questions involved in the suit effectually and completely. A person is not to be added as a defendant merely because he would be affected by the judgment. The main consideration is whether or not the presence of such person is necessary to enable the Court to adjudicate upon and settle the questions involved in the suit. The intervenors the purchasers of property during pendency of suit were neither necessary nor proper parties for adjudication of the points involved in the suit viz. title to the suit property and, therefore, the provision of O.1, R. 10 was not attracted."

8. In view of my above discussion, I hold that the present application under

Order 1, Rule 10, C.P.C., has no merit and is hereby dismissed, leaving the parties to bear their own costs.

9. Nothing stated above, shall amount to my expression of opinion on the merits of the case.

10. Application dismissed.