
(2019) 10 SHI CK 0056
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 328 Of 2018

Hari Pal

APPELLANT

Vs

Rakesh Kumar And Others

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10, Order 1 Rule 10(2)

Citation : (2019) 10 SHI CK 0056

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : M.A. Safee, Prashant Chaudhary, T.S. Chauhan

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this petition, petitioner has challenged order passed by the Court of learned Senior Civil Judge, Palampur, District Kangra, H.P. dated 15.05.2018, vide which an application filed by the present petitioner under Order 1, Rule 10 of the Code of Civil Procedure, for impleading him as also Town and Country Planner, Divisional Town Planning Office, Dharamshala and Department of Town Planning, Himachal Pradesh, as defendants in the suit, has been dismissed.

2. Brief facts necessary, for the adjudication of the present petition are that a suit has been filed by respondent No.1 herein, which is pending adjudication before the Court of learned Senior Civil Judge, Palampur, District Kangra, H.P. A copy of the plaint is appended with the petition as Annexure P-7. The suit filed is for decree of permanent prohibitory injunction, for restraining defendants No.1 to 3 from disconnecting the electricity consumption meter with Account No.GLG-532 (C/s) installed in the house-cum-shop premises of the plaintiff situated partly on the land entered in khata No.465, khatoni No.917, khasra No.1630, measuring 00-06-35 Hect and partly on the land entered in khata No.470, khatoni No.923, khasra Nos.1764 and 1766, measuring 00-06-94 Hect., situated in Mohal and

Mouja Ghuggar, Tehsil Palampur, District Kangra, H.P., as per jamabandi for the year 2007-08.

3. A perusal of the plaint demonstrates that the petitioner herein was impleaded as defendant No.4 in the Civil Suit. Thereafter, when the matter was listed before the learned trial Court, on 07.10.2017, plaintiff withdrew the suit against defendant No.4. Suit against the present petitioner was withdrawn after written statement to the plaint stood filed by the petitioner. On the date when the said suit was withdrawn against the petitioner by the plaintiff, the petitioner herein was duly represented by his counsel before the learned trial Court. The order so passed by the learned trial Court, vide which it permitted the suit to be withdrawn by the plaintiff against the present petitioner, does not demonstrate that request of the plaintiff to withdraw the suit against the present petitioner was objected to by the present petitioner through his counsel before the learned trial Court.

4. However, thereafter, an application was filed by the present petitioner under Order 1, Rule 10 of the Code of Civil Procedure, praying for his impleadment as a defendant alongwith other party as stands mentioned hereinabove inter alia on the ground that the petitioner was a necessary party in the Civil Suit.

5. Vide order dated 15.05.2018, this application stands dismissed by the learned Court below. While dismissing the application, learned trial Court held that record demonstrated that the suit filed by the plaintiff was a simplicitor suit for permanent prohibitory injunction for restraining defendants No.1 to 3 from disconnecting the electricity meter installed in his house-cum-shop on the suit land. Learned trial Court held that undoubtedly, dominus litis of the case was with plaintiff and plaintiff was at liberty to choose the adversary against whom, he intended to pursue the case. It held that if the suit ultimately was found bad for non-joinder of the necessary party, law will take its course and plaintiff shall be non-suited. It further held that in case present petitioner who was applicant before the learned trial Court was having some grouse against plaintiff or in case there was some violation of law by plaintiff, then petitioner was at liberty to seek the appropriate remedy against plaintiff before the appropriate forum in accordance with law.

6. On these basis, learned trial Court dismissed the application filed by petitioner, however, with liberty to petitioner to approach the appropriate forum separately for redressal of his grievance, if any, against the plaintiff.

7. Feeling aggrieved, petitioner has filed the present petition.

8. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law as learned Court below has erred in coming to the conclusion that because dominus litis was with the plaintiff, therefore, petitioner was not a necessary party in the lis. He has further argued that when plaintiff had made a request for withdrawing the suit against present petitioner, same was objected too, though objections do not find recorded in the order vide which

the suit was permitted to be withdrawn against the petitioner. On these counts, he submits that the order passed by the learned trial Court was perverse and liable to be set aside.

9. On the other hand, learned counsel appearing for the respondents/ plaintiff has argued that there was no perversity with the order passed by the learned trial Court. He submitted that dominis litis is with plaintiff and in case the suit ultimately was found bad for non-joinder of the necessary party, the same would be dismissed. He stated that the findings returned by the learned trial Court that plaintiff could not be forced to implead any one and every one as a defendant, were correct findings because it was the domain of plaintiff to choose as to against whom he intended to pursue the case. He, thus prayed that as there is no merit in the present petition, the same deserved to be dismissed.

10. I have heard learned counsel for the parties and have also gone through the order passed by the learned trial Court as well as other documents appended with the petition.

11. A perusal of the record demonstrates that the suit was withdrawn by plaintiff against present petitioner on 07.10.2017. On the said date, present petitioner who was defendant No.4 in the Civil Suit was represented by Shri Devid Peter, Advocate. The order passed by the learned trial Court permitting the plaintiff to withdraw the suit against defendant No.4 does not suggest that any objection was raised by defendant No.4 through counsel against the request so made by the plaintiff.

12. Not only this, even if it is assumed that though objection in this regard was made by learned counsel, however, learned trial Court did not record the same in the order which was passed, then prudence demanded that defendant No.4 either should have filed a review of the order so passed or should have assailed the order before the superior Court of Law by asserting said fact which admittedly was not done by the petitioner. Not only this, in the application which stood filed under Order 1, Rule 10 of the Code of Civil Procedure, for impleading the petitioner as defendant No.4, there is no such averment made in the application.

13. This clearly demonstrates that when plaintiff made a request for withdrawing the suit against present petitioner, petitioner was not having any objection qua said request and subsequent filing of the application under Order 1, Rule 10 of the Code of Civil Procedure was an afterthought.

14. Besides this, once petitioner stood impleaded as a defendant and thereafter, plaintiff chose not to pursue said suit against said defendant, the remedy before defendant was to challenge the order vide which plaintiff was permitted to withdraw the suit against him. He could not have again sought his impleadment in the suit by moving an application under Order 1, Rule 10 of the Code of Civil Procedure because the order vide which plaintiff was permitted to withdraw the suit will always stare at the face of the learned Court below before which

application under Order 1, Rule 10 of the Code of Civil Procedure was filed. In addition, there otherwise is no infirmity with the findings returned by the learned trial Court that dominis litis is with plaintiff and in case ultimately learned trial Court comes to the conclusion that the suit was bad for non-jonider of the necessary or property party, then consequences would ensue.

15. This Court is not in oblivious to the fact that simply because dominis litis is with plaintiff, a person who would be effected by outcome of a lis, has no right to make a prayer under Order 1, Rule 10 of the Code of Civil Procedure for being impleaded as a party to the suit. However, for that the ingredients of Order 1, Rule 10 of the Code of Civil Procedure, specifically Order 1, Rule 10 (2) of the Code of Civil Procedure, have to be fulfilled. In this case, a perusal of the plaint and the written statement filed thereto does not demonstrates that petitioner has any stake on the suit land, as the factum of the suit land being owned either by the plaintiff or his mother has not been denied in the written statement.

16. Be that as it may, fact of the matter still remains that the order vide which plaintiff was allowed to withdraw the suit against present petitioner has attained finality and same has not been assailed before any superior Court of Law. Therefore, this Court does not does not finds any infirmity with the order which has been passed by the learned trial Court, vide which the application filed by present petitioner for being impleading him as defendant in the suit under Order 1, Rule 10 of the Code of Civil Procedure, has been dismissed.

17. In view of the findings returned hereinabove, present petition being devoid of any merit is dismissed.

Pending applications, if any, stand disposed of. Interim order, if any, stands vacated.