

**(2022) 12 J&K CK 0036**

**In the Jammu And Kashmir High Court**

**Case No : Criminal Miscellaneous Cases No. 285 Of 2022**

Mohammad Iqbal Wani & Ors

APPELLANT

Vs

Khursheed Ahmad Malik And Ors

RESPONDENT

**Date of Decision : 14-12-2022**

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 1 Rule 10

**Citation : (2022) 12 J&K CK 0036**

**Hon'ble Judges : Sanjay Dhar, J**

**Bench : Single Bench**

**Advocate : S.H.Thakur**

**Final Decision : Dismissed**

## **Judgement**

Sanjay Dhar, J

1. The petitioners have challenged order dated 05.09.2022, passed by learned Sub Judge, Shopian, whereby application of one Ghulam Qadir Malik S/o Abdul Jabbar Malik R/o Kanjiullar Shopian under Order 1 Rule 10 of CPC, for impleading him as party defendant to the suit filed by the petitioners, has been allowed.

2. It appears that the petitioners have initially filed a suit before the trial Court against all the respondents herein seeking a declaration to declare petitioner No.1 to be the owner in possession of land measuring 3 kanals falling under survey No.88 situated at village Kanjiullar Shopian and petitioner No.2 to be the owner in possession of land measuring 01 kanal under survey No.57 situated at village Aadijan Shopian. Besides this, certain other reliefs were also sought which include a decree for formal partition alongwith separate possession in favour of petitioners 3 and 4 in respect of land falling under khasra Nos. 134, 88, 08, 223, 97, 58 and 128 situated at Kanjiullar Shopian. However, lateron name of the applicant Ghulam Qadir Malik, who figured as defendant No.2 was deleted from the array of the parties. It appears that some compromise took place between the parties for declaring the plaintiffs and the defendants as owners of the land.

However, defendant/applicant Ghulam Qadir Malik had been deleted from the array of the parties, by that time.

3. On 22.07.2020 applicant Ghulam Qadir Malik made an application before the trial Court seeking his impleadment as defendant to the suit on the ground that the compromise that had been arrived at between the parties is adversely affecting his rights in the suit property. The said application was allowed by learned trial Court vide the impugned order and applicant Ghulam Qadir Malik was impleaded as party defendant to the main suit.

4. The petitioners/plaintiffs have challenged the order of the trial Court on the grounds that the parties to the suit have agreed to set at rest their differences and that they have settled the subject matter of the suit. It is contended that because of impleadment of applicant Ghulam Qadir Malik as party defendant, the settlement is sought to be set at naught. It has been also contended that applicant Ghulam Qadir Malik had left his parents and the village long back and that his interests have been protected in the settlement made by the parties through mediation. It has also been submitted that even if the decree is passed pursuant to the settlement arrived at between the parties, the same can be challenged by applicant Ghulam Qadir Malik by way of a separate suit.

5. I have heard learned counsel for the petitioners and perused the record of the case.

6. It is not in dispute that applicant Ghulam Qadir Malik was impleaded as defendant No.2 to the suit but later on he was deleted from the array of the parties. In the suit one of the reliefs claimed is that defendants No. 1 to 6, which includes the applicant Ghulam Qadir Malik too, is a direction to them to execute and register sale deed of land measuring 03 kanals under survey No.88 situated at village Kanjiullar Shopian in favour of plaintiff Nos. 1 and 2 with a further direction that they should perform their respective contracts so as to put plaintiff Nos. 1 and 2 in full fledged ownership of the aforesaid land. Another claim in the original plaint is that defendants including Ghulam Qadir Malik should be permanently restrained from causing any sort of interference with the suit land.

7. From the afore said nature of relief sought by the plaintiffs in the main suit, it is clear that Ghulam Qadir Malik is a necessary party to the proceedings without whose presence the issues arising in the suit cannot be determined effectively, nor any order, decree or judgment whether based on compromise or otherwise can be executed in his absence. Even a decree of partition which the plaintiffs have sought cannot be granted without the presence of Ghulam Qadir Malik, who is admittedly a share holder of the suit property. Merely because the applicant Ghulam Qadir Malik has not entered into settlement with the petitioners/plaintiffs does not make him a stranger to the suit. The contention of the petitioner that if Sh. Ghulam Qadir Malik is impleaded as defendant it would negate the settlement arrived at by the other parties to the suit, cannot be a ground to decline the application for his impleadment, when he is certainly a necessary

party to the suit.

8. As per the provisions contained in Order I Rule 10 of CPC, the Court has power to strike out or add parties to a suit or proceedings. The Court has jurisdiction to implead a person, whether as plaintiff or defendant, whose presence may be necessary, in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. In the present case, as already noted, the presence of Ghulam Qadir Malik, as party defendant to the suit, is absolutely necessary to enable the trial court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Therefore, the trial court has rightly allowed the application of Ghulam Qadir Malik and impleaded him as a defendant to the suit.

9. For the foregoing reasons, I do not find any illegality, much less gross illegality, in the impugned order passed by the trial court. The petition lacks merit and is dismissed accordingly.