
(1985) 09 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1589 of 1985

Naib Singh and another

APPELLANT

Vs

Sada Ram and others

RESPONDENT

Date of Decision : 02-09-1985

Acts Referred:

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

Citation : (1985) 09 P&H CK 0003

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : H.L. Sarin and Mr. Anant Singh Grewal, for the Appellant; M.S. Sullar, for the Respondent

Final Decision : Allowed

Judgement

M.M. Punchhi, J.—This revision petition is against an order of Sh. M.L. Bansal, Sub-Judge II Class, Ambala, whereby he allowed an application of Sheo Ram Respondent to be impleaded as a co-Plaintiff in a suit which was being compromised by the Plaintiffs and Defendants and through this measure, the compromise between the original parties was stalled.

2. The bone of contention in the suit related to two boras Nos. 302 and 303 situated in village Baraundi, Tehsil Naraingarh, District Ambala. The Plaintiffs Naib Singh and Baldev Singh, sons of Rikhi Ram, claim to have purchased these plots from another by means of a registered deed for a sum of Rs. 5,000/- and since it had been trespassed upon by the Defendants, they sued them for a declaration and possession. During the course of proceedings, the parties submitted a written compromise whereby ownership and possession was conceded to the Plaintiffs to the extent of 5/8th share in the plots and the remaining 3/8th share was conceded in favour of the Defendants, except Nand Singh Defendant. When the Court was about to put seal to the said compromise and dispose of the suit accordingly, Sheo Ram Respondent, who happens to be the third brother of the Plaintiffs, filed an application that he had a vital interest

in the property in dispute being a co-owner with the Plaintiffs and since they were compromising the suit by trampling his rights over the property in dispute, he was a necessary party to be impleaded as a co Plaintiff The learned trial Judge, finding merit in the application, allowed it and in this manner the suit was not disposed of and is left to be agitated.

3. The Plaintiff-Petitioners have challenged the action taken by the trial Judge and his view that the intervener was a necessary party to be impleaded as a co-Plaintiff. It has been urged that the trial Court's exercise of discretion under Order 1, Rule 10, CPC Code, has led to a failure of justice, for it has been assumed barely on the affidavit of the applicant that he is a co-owner in the property in dispute as also in possession of 1/3rd thereof just on the basis of an affidavit. It has been asserted by the Petitioners' Learned Counsel that in the presence of the registered deed, concededly in favour of the Plaintiffs, there was not even a, prima facie case with the applicant-Respondent to aver and prove that he was a co-owner with the Plaintiffs or to have asserted possession on the plots when there was no documentary evidence to support his claim, even prima facie On the other hand, Learned Counsel for the applicant-Respondent, says that the discretion exercised by the learned trial Judge is not open to revision u/s 115, CPC Code, and further, joining of the applicant was absolutely essential and necessary, for in his absence the Court would have been unable to effectively and completely adjudicate upon the matter in issue.

4. Having heard the Learned Counsel for the parties, I am of the view that the discretion exercised by the learned trial Judge is a material irregularity and has led to failure of justice. When the parties had settled the matter amongst themselves, there remained no lacuna left which would, in the absence of the party sought to be Impleaded as a co-Plaintiff, have deterred the Court to effectively and completely adjudicate upon the matter in issue. When the parties settled the dispute, as they have done in the case and there was no legal bar to their settlement, the Court was thus left with no option but to decree the suit in accordance with the written settlement put on the record by the parties It goes without saying that the decree passed by the Court would only act in personum, that is to say it would bind only the parties to suit The applicant-Respondent could not by such an application be permitted to stall the compromise on assertions which were merely oral and had no documentary proof of unimpeachable character to back him. Thus, in the situation, he, in Order to establish his right over the property in dispute, be it of ownership or possession, had to establish it separately and that too against all parties, who, in violation of his supposed rights, had settled the matter amongst themselves In the present suit, his presence was not necessary to enable the Court to completely and effectively adjudicate upon the matter. Thus, for the view afore taken, this petition needs to and hereby succeeds setting aside the impugned order.

5. For the foregoing reasons, this petition is allowed Let the trial Court go ahead to dispose of the suit in the absence of the applicant-Respondent Sheo Ram. No

costs.