

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

CR-1355-2018(O&M)

Date of Decision: May 01, 2025

Karambir and others

...Petitioners

Versus

Municipal Corporation and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Varuna Singh, Advocate
for the petitioners.

Ms.Pruna Malhotra, Advocate for
Mr.Prateek Mahajan, Advocate
for respondent No.1.

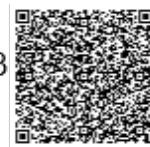
Mr.Varun Veer Chauhan, Advocate
for respondent No.2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 22.11.2017 passed by learned trial Court, whereby, an application under Order 1 Rule 10 CPC, filed by respondent No.2 (Hari Om), for impleadment as defendant No.2, was allowed.

The essential facts, to be noticed, are as follows:-

That, initially, the petitioners (plaintiffs before learned trial Court) had filed a suit for permanent injunction against respondent No.1 (defendant before learned trial Court), thereby, asserting that land comprising in

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Khewat No.1190/1195 min, Khata No.1635 min. Rect. & Killa No.175 (0-8), situated within the area of village Rathdana, Tehsil and District Sonapat, has been wrongly shown as 'Share-am' in the revenue record and further, averred that in fact, it was left as rasta/khal for the well bearing Killa No.174, gair mumkin chah pukhta etc., as per jamabandi for the year 1971-72. It is further averred that disputed Killa No.175(0-8), as detailed, was never used for any common purposes/rasta, since the time of consolidation. Even, the ancestors of the plaintiffs (petitioners) had left the rasta/gali for their personal holding Plot No.177/14, owned and possessed by the ancestors of the petitioners-plaintiffs and all the inhabitants of village, are using the same as rasta without any obstacle from any corner of any type.

Further, it is stated that defendant-respondent No.1 took undue advantage of the wrong revenue entries of the rasta, regarding Killa No.175, which has never been used as rasta, till date. Rather, it is asserted that for the last 35-36 years, pucca house of the petitioners-plaintiffs stands constructed. Naresh and Hari Om, sons of Shish Ram of village Rathdana, who are inimical to the petitioners-plaintiffs, had filed an application under Section 7 of the Punjab Village Common Lands Act (PVCL), on false and frivolous grounds, showing Rect. & Killa No.175 as rasta and that vest in the Gram Panchayat, for ejection of the petitioners-plaintiffs, from the above suit property.

In fact, it was dismissed by Assistant Collector Ist Grade-cum-DRO, Sonapat, vide order dated 31.05.2007. An appeal was filed bearing No.90 of 2007, which was also dismissed by the Court of Collector, Sonapat, vide

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order dated 10.01.2008. Thereafter, said Naresh etc. had filed a writ petition before this Court and vide order dated 28.11.2011, this Court remanded the case to Assistant Collector Ist Grade, Sonapat, to decide the case afresh, in the light of documentary evidence, brought on record, as well as provisions of PVCL Act.

Also, it is asserted that after remand ACIG-cum-DRO, Sonapat, accepted the application under Section 7 of the PVCL Act, vide order dated 27.1.2015 and ordered ejection of the petitioners-plaintiffs from the suit property vide order dated 08.06.2015, against which the petitioners-plaintiffs had filed an appeal in the Court of Collector, Sonapat vide case No.14/DC, which was dismissed on 20.10.2015, on the ground that due to Haryana Government Notification dated 06.07.2015, the suit property has been included in the Municipal Corporation, Sonapat and hence, the case, could not be decided under the PVCL Act, 1961. It is asserted that this order is illegal, null and void.

Further, it is asserted that under the garb of order dated 20.10.2015, the defendant-respondent No.1, is threatening to demolish the house of the petitioners-plaintiffs, forcibly and illegally. Show cause notice to the petitioners-plaintiffs dated 18.11.2015 under Section 408 of the Haryana Municipal Corporation Act, 1994, was duly received. In this context, the injunction was sought to restrain Municipal Corporation, Sonapat, from demolishing the house of the petitioners-plaintiffs, as detailed in the relief clause.

Upon notice, Municipal Corporation had made appearance and

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filed reply, wherein, suffice to consider that Municipal Corporation also asserted about Killa No.175 (0-8) to be shown as rasta share-am, in the revenue record and further also denied about the private land having been left for khal for tubewell, bearing Khasra No.174, during the consolidation proceedings. In fact, the said rasta is used by the inhabitants of the village from the very inception. Also, it was asserted that on both the sides of passage, there are plots and said passage goes upto the main phirni of the village, as observed by this Court in the order dated 28.11.2011 passed in CWP-4450-2008.

In fact, it was denied that khasra No.175 had never been used by villagers for common purposes as rasta. It was asserted that petitioners-plaintiffs are in illegal and unauthorized possession of the suit property and the answering defendant is within the right to eject the plaintiffs from the suit land.

During the pendency of the aforesaid suit, an application under Order 1 Rule 10 CPC was filed, at the instance of Hari Om, son of Shish Ram, for being impleaded as defendant No.2, in the aforesaid suit. In the application, copy whereof is Annexure P-4, it was asserted by Hari Om that he is affected party, as his house is situated on rasta No.175 and the same was encroached by the petitioners-plaintiffs and all the proceedings regarding ejectment of above-said rasta No.175 was done by him. Also, further it was asserted that in all other litigation, he was party and rasta of the applicant, has been completely closed by the petitioners-plaintiffs. The applicant is necessary and proper party in the present suit.



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Reply was filed, wherein, the petitioners-plaintiffs resisted the aforesaid application.

After hearing learned counsel for the parties, vide impugned order dated 22.11.2017, learned trial Court, keeping in view the factual assertions made in the plaint and also taking into consideration the written statement, filed at the instance Municipal Corporation, Sonapat, had concluded that petitioners-plaintiffs have themselves admitted about on-going litigation, pending against the applicant (respondent No.2) and therefore, no prejudice would be caused to them, if he is added as party to the present suit. Rather, it would help the Court, in deciding the controversy effectively and properly and all the facts would come to fore, providing impetus to the Court to comprehend the nitty-gritty of the facts properly and consequently, allowed the application.

Being aggrieved, the petitioners-plaintiffs have filed the present revision petition.

Upon notice, respondents made appearance.

Learned counsel for the parties heard.

At the very outset, learned counsel for the petitioners-plaintiffs has vehemently submitted that in fact, it is the plaintiffs, who are *dominus litus* of the proceedings and therefore, they cannot be compelled to contest against a party, against whom, they do not wish to contest. Furthermore, also it is submitted that learned counsel for respondent No.2, has not been able to show, as to how the presence of Hari Om is necessary before the trial Court, for the proper determination of the suit for permanent injunction,



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more particularly, when the show cause notice has been issued by the Municipal Corporation, Sonepat only. To so emphasize his submissions, learned counsel for the petitioner has placed reliance upon decision rendered by this Court in *Ramesh Kumar vs. Naresh Kumar, 2001(4) RCR (Civil) 693* and decision rendered by the Hon'ble Supreme Court in *Ramesh Hiranand Kundanmal vs. Municipal Corporation, Greater Bombay, 1992 (1) RCR (Rent) 644*.

On the other hand, while making reference to tracing of the litigation between the petitioners-plaintiffs as well as the respondent No.2-Hari Om, it is assiduously submitted by learned counsel for respondent No.2 that it is not wish of the petitioners-plaintiffs, which ought to be taken into consideration, while considering impleadment of respondent No.2, as party to the litigation. In fact, learned counsel submits that it is for the Court to appraise the interest of the person concerned, who had filed an application for impleadment as defendant. In fact, it is submitted that the suit has been filed against Municipal Corporation, Sonepat only, while the petitioners-plaintiffs wants to keep under wrap the orders passed against them by the various authorities, with regard to the usage of Khasra No.175 as share-am rasta, which is so reflected in the jamabandi.

Since, the house of respondent No.2-Hari Om also exists on one side of the passage, therefore, obstruction of the same, as caused by petitioners-plaintiffs, do amply affect his rights and therefore, he is a necessary party.

Order 1 Rule 10 CPC empowers the Court to make an addition or deletion of the parties, as necessary, in order to enable the Court to

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factually and completely adjudicate upon and settle all questions, involved in the suit. The person to be joined must be one, whose presence is necessary as a party. It is not merely that he has an interest in the correct solution of some question involved. However, the only reason, which makes it necessary to make a person a party to an action, is so that he should be bound by the result of the action and the question to be settled, therefore, it must be a question in action, which cannot be effectually and completely settled, unless he is a party.

Therefore, it is necessary that the person, must be directly or legally interested in the action i.e. outcome of litigation, which may lead to a result, which will affect him legally that is by curtailing his legal rights.

As observed aforesaid, the petitioners-plaintiffs themselves have stated about the manner of litigation between them as well as Hari Om-respondent No.2, with regard to the land in question. It is also stated by them that the dispute relates to Killa No.175, which is reflected as rasta share-am and petitioners-plaintiffs state about the same to be wrongfully entered in the revenue record. However, the litigation, as such, was decided against one Naresh (who was defendant No.1 before the Court) and Hari Om, by the various revenue authorities.

In fact, CWP-4450-2008 was filed by Naresh and Hari Om, for quashing of the order dated 31.05.2007, passed by Assistant Collector Ist Grade, Sonapat, as well as the order dated 10.01.2008 passed by the Collector, Sonapat, whereby, the applications filed by them, under Section 7 of the PVCL Act was dismissed. The copy of the order passed in aforesaid

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writ petition has been placed on record by learned counsel for respondent No.2. The fact, as reproduced in the said order, reveals about the dispute to be related to passage bearing Khasra No.175. In fact, it is the categorical claim of the respondent No.2, in this litigation that Khasra No.175 is the passage, which has been encroached by the petitioners-plaintiffs, in their own property and they are asserting about different passage bearing Plot No.177/12, 13, 14 and 15.

However, this Court had concluded about the findings recorded by Assistant Collector Ist Grade and Collector, vide impugned orders, to be not based on evidence on record and on this account, the orders were set-aside and the case was remanded to Assistant Collector Ist Grade, to decide the case afresh, in view of the documentary evidence on record, as well as the provisions of PVCL Act. Thereupon, the land in question vested in Municipal Corporation, Sonapat and against the Municipal Corporation, the suit for permanent injunction was filed, once the show cause notice was issued to the petitioners-plaintiffs.

Considering this manner of litigation between the parties and when Hari Om was litigating with the petitioners-plaintiffs, with regard to the rasta existing in Khasra No.175 or not and about its encroachment by the petitioners-plaintiffs, therefore, the findings so recorded, will affect respondent No.2 legally. It may also curtail his legal rights and on this account, respondent No.2 is a necessary party, whose impleadment, shall enable the Court to factually and completely adjudicate upon and settle the disputed questions, in the civil suit.



Considering the same, it has been correctly observed by learned trial Court that on account of this on-going litigation, pending against Hari Om, no prejudice, would be caused to the petitioners-plaintiffs, if he is added as a party to the present suit. Rather, his presence would help the Court, in deciding the controversy effectively and properly and therefore, the application under Order 1 Rule 10 CPC has been correctly allowed by learned trial Court and the impugned order, as such, warrants no interference.

Hence, the revision petition sans merit and is hereby dismissed.

May 01, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No