



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8797-2016

Reserved on : 09.01.2025

Pronounced on: 18.01.2025

Kamlesh Gupta

...Petitioner

V/s

Dr. Sham Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Ms. Munisha Gandhi, Senior Advocate with
Ms. Salina Chalana, Advocate, and
Mr. Harit Narang, Advocate, for the petitioner.

Mr. Vikas Mohan Gupta, Advocate,
for respondents No.1 and 2.

None for respondents No.3 and 4.

VIKRAM AGGARWAL, J.

The petitioner (Kamlesh Gupta) assails the order dated 21.11.2016 (Annexure P-1) passed by the Court of learned Civil Judge (Jr. Divn.), Patiala, vide which an application preferred by respondents No.3 and 4 (Amritpal Singh and Ram Kishan), under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short the "CPC"), was allowed.

2. The facts, briefly, are that a suit under Section 92 CPC was filed by respondents No.1 and 2 (Dr. Sham Lal and Drashan Kumar) in which the general public, the present petitioner and her two brothers i.e. respondents No.5 and 6 herein (Dr. Mohinder Pal and Ranbir Pal), were arrayed as parties. The prayer was for the issuance of directions for framing a scheme with regard to management of the trust property, its preservation and application etc.



3. The case set up was that Dr. Jai Gopal was the owner of a large number of properties and was a renowned social worker of Patiala. He was associated with Shri Sanatam Dharam Kumar Sabha (Regd.), Patiala (for short the "Sabha") and was the chairman of many social organizations, including Cremation Grounds and Bir Dasondhi Ram Apahaj Ashram, Rajpura Road, Patiala, both being run and managed by the Sabha. It was stated that he created a charitable trust in the name of Dr. Jai Gopal Educational Charitable Trust, Patiala vide registered trust deed dated 04.02.2002, which consisted of 95/149 shares out of land measuring about 7 *kanals*, situated in the revenue estate of Rasulpur Saidan, Tehsil and District Patiala. A school building is also stated to have been constructed by Dr. Jai Gopal, which was later stated to have been dedicated to the trust. It was averred that the land to the extent of 52¼ shares was separate from the property in which the school had been constructed. A Will dated 03.02.2000 is stated to have been executed by Dr. Jai Gopal. It was also stated that the relations of Dr. Jai Gopal with his children i.e. Kamlesh Gupta and her two brothers were not cordial and they had not served Dr. Jai Gopal even after the death of his wife. It was on account of this, he executed a Will dated 03.02.2000 bequeathing all his property for charity and he named the plaintiffs as trustees.

4. The suit was opposed by Kamlesh Gupta and her brothers by way of written statement (Annexure P-3). During the pendency of the suit, an application under Order I Rule 10 CPC (Annexure P-4) was moved by respondents No.3 and 4 namely Amritpal Singh and Ram Kishan. It was averred in the application that since both the parties to the *lis* were closely related, the possibility of their colluding could not be ruled out, as a result of which they were desirous of becoming parties, being interested in the



maintenance of the trust properties. They, therefore, prayed that they be impleaded as co-plaintiffs along with Dr. Sham Lal and Darshan Kumar. This application was opposed by way of a reply filed by the present petitioner Kamlesh Gupta.

5. Vide the impugned order, the application was allowed by the trial Court stating that the plaintiffs had given their no objection to the applicants being impleaded as parties.

6. Aggrieved by the said order, the revision petition was filed.

7. Learned counsel for the parties were heard.

8. Ms. Munisha Gandhi, learned Senior Counsel representing the petitioner strenuously urged that the order is not sustainable. It was submitted that the applicants No.3 and 4 were strangers to the property and to the trust and, therefore, they could not have been impleaded as parties. It was submitted that on account of the application having been allowed, serious prejudice had been caused to the petitioner as strangers could not have been permitted to become parties to the *lis*. It was submitted that only 52¼ share is with the petitioner and her brothers and the remaining part is already with the trust. It was submitted that even the Will set up by the applicants is a forged and fabricated Will and the same shall have to be proved by them before the trial Court in accordance with law.

9. *Per contra*, Mr. Vikas Mohan Gupta, learned counsel representing respondents No.1 and 2 submitted that general public was also a party and under the circumstances, anybody could have joined the *lis* as parties. It was submitted that no prejudice had been caused to the petitioner on account of the application having been allowed.

10. I have considered the submissions made by learned counsel for the parties. Order I Rule 10(2) CPC provides for “striking out or adding



parties”;

“10. Suit in name of wrong plaintiff.—

(1) xxx xxx xxx

(2) Court may strike out or add parties.—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 to adjudicate upon and settle all the questions involved in the suit, be added.

(3) xxx xxx xxx”

11. Merely because there is a provision, it does not mean that any application moved under the said provision would have to be allowed. On the contrary, there would have to be application of mind by the Court. The suit filed by respondents No.1 and 2 (plaintiffs) was under Section 92 CPC. If somebody wanted to join the suit as plaintiffs, which was the prayer of the applicants, due permission under Order 1 Rule 8 was also required. The trial Court simply allowed the application on the basis of a no objection having been given by the plaintiffs and did not apply its own mind. Whether the applicants were necessary or proper parties was not seen. It was not considered that they were strangers to the *lis*, as also to the trust. They could not show as to what interest they had. The application had vague averments. Still further, the prayer of the applicants was to implead them as plaintiffs, whereas the trial Court impleaded them as defendants. No reason was given for this change also. Either it was completely non-application of mind, or it was an oversight or the matter was dealt with in perfunctory manner. Be that as it may, the order, for the reasons aforementioned is unsustainable. In a suit filed under Section 92 CPC, the plaintiff could not be said the *dominus litis* and it would be the Court which would examine as to whether the



parties were to be added or not. From time to time, the Supreme Court of India and various High Courts in different cases, examined as to when an application under Order 1 Rule 10 CPC could be allowed;

1. In *Balasaheb v. Venkat*, (2006) SCC 530, it was held as under:

"in application for impleadment under Order 1, Rule 10 CPC, the only question that comes to be decided as whether the presence of the applicant before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle all the disputes involved in the proceedings."

2. In *Amit Kumar v. Farida*, AIR 2005 SC 2209, it was held as under:

"a person can be added as a party in two cases, viz (a) if he ought to have joined as a party to the suit and has not been so joined; (b) if the suit can not be decided without his presence."

3. In *Anil Kumar v. Shiv Nath* (1995) 3 SCC 147, it was held as under:

"out of several tests for deciding the question if a third person should be allowed to be added as a party in a suit, the important tests are; (1) whether the result of the suit will affect the third party applicant; (2) whether the court will be required to answer any issue other than those arising or would arise from the suit from the pleadings of parties to the suit; and (3) whether the presence of the party will facilitate effective and complete adjudication of all questions involved in the suit. A party may be added although no relief has been claimed against him. His presence is necessary for a complete and final adjudication. He is thus a proper party."

4. In *S.T.C. v. Chittoor Co-operative*, AIR 1990 Delhi 142, it was held as under:

'there may be cases when some person has to be impleaded as party defendant for proper adjudication of the dispute although no relief can be claimed against him.

5. In *Ratan Muni College v. Additinal Civil Judge*, AIR 1995 Allahabad 7, it was held as under:

"theory of dominus litis should not be over stretched. The Court may order that a party be joined at any stage of the proceeding to completely and effectively adjudicate the dispute even if a party to



the suit does not choose to implead."

6. In *Udit v. Additional Member Board of Revenue* AIR 1963 SC 786 it was held as under:

"Court can suo-motu or on the application of a party can add or implead a proper party for completely settling the dispute".

7. In *Kasturi v. Iyyamperumal*, (2005) 6 SSC 733, it was held as under:

"for determining whether a party is a necessary party or not, the following two facts are to be satisfied;

(1) there must be a right to some relief against such party in respect of conditions involved in the proceeding; and

(2) no effective decree can be passed in the absence of such a party."

12. The impugned order shows that none of the aforesaid factors were considered by the trial Court before allowing the application and as stated earlier, the same was allowed only on the basis of no objection having been given by the plaintiffs.

13. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the order under challenge is not sustainable.

14. In view thereof, the revision petition is allowed, the order dated 21.11.2016 (Annexure P-1) passed by the Court of learned Civil Judge (Jr. Divn.), Patiala, is set aside and the application for impleadment stands dismissed.

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 09.01.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No