

**HIGH COURT OF PUNJAB AND HARYANA**

Bench: Justice Gurbir Singh.

Date of Decision: 29 September 2023

**Case No. : C. R. No. 4685 of 2023**

Dr. Bijender @ Vijender Kumar   ....     Petitioner  
vs.  
Mehar Singh and another   ....     Respondents

**Sections, Acts, Rules, and Article:**

Article 227 of the Constitution of India

Order 1 Rule 10 and Section 151 of the Code of Civil Procedure (CPC)

**Subject:** Impleadment of a party in a civil suit when the suit property is owned and constructed by the son of the defendant.

**Headnotes:**

*Civil Revision – Impleadment of Party – Plaintiff filed a suit for permanent injunction against the defendant – Defendant claimed no concern with the suit property as construction was done by his son – Plaintiff moved an application under Order 1 Rule 10 read with Section 151 CPC to implead the son as defendant no.2 – Defendant opposed the application as time-barred and moved to dismiss it – Trial Court allowed the application for impleadment – Challenge to the said order – Whether son of defendant properly impleaded as defendant no.2 – Held, in a society where a son and father are not separate entities, and the son is the owner and constructor of the suit property, son is a necessary party to the suit – Delay not a valid ground to deny impleadment – Impugned order upheld. [Para 1-10]*

**Referred Cases:**

Akki Oswal Trust (Regd.) and others vs. M/s Jainson Hosiery Industries and another – C. R. No. 2165 of 2014, decided on 24.03.2014

**Representing Advocates:**

Mr. Rajesh Goyal, Advocate for the petitioner.

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**GURBIR SINGH , J. :**

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to order dated 05.07.2023 (Annexure P-5), passed by learned Civil Judge (Junior Division), Panipat (for brevity – Trial Court), whereby application moved by respondent no.1/plaintiff, under Order 1 Rule 10 read with Section 151 CPC, has been allowed.
2. The brief facts, as culled out from the paper book, are that respondent no.1/plaintiff (hereinafter called – the plaintiff) filed a suit for permanent injunction against the petitioner/defendant (hereinafter called – the defendant) stating therein that the defendant is raising construction towards the gate of plaintiff, along with mandatory injunction for directing the defendant to remove the construction already made.
3. The defendant purchased the property from the sons of brother of the plaintiff. The common street was left by the plaintiff and his brother on the part of property of the plaintiff. The defendant, in order to occupy the said street, started raising construction thereon. The defendant filed written statement stating therein that he had no concern with the suit property. The construction has already been completed by the son of the defendant before filing of the suit.
4. The plaintiff filed an application under Order 1 Rule 10 read with Section 151 CPC (Annexure P-3) to implead Ravi – son of the defendant as defendant no.2 in the suit, on the ground that suit property is in the name of his son namely Ravi, as disclosed by the defendant himself in his written statement. Hence, impleadment of Ravi was necessary for proper decision of the suit.
5. The defendant filed reply to the aforesaid application stating therein that the said application was time barred as the same was filed after more than two years of filing written statement by the defendant in order to delay the

proceedings. So, the application should not be allowed and his son should not be allowed to be impleaded as defendant no.2 in the suit.

6. The learned Trial Court, vide impugned order, allowed the application and Ravi – son of the defendant was ordered to be impleaded as defendant no.2 in the suit.
7. Learned counsel for the defendant has argued that the plaintiff himself delayed the decision of the case. He took many opportunities for filing the replication and thereafter, for leading his evidence. When the Court was going to close his evidence, he moved the application in question just to delay the matter. The plaintiff was required to move the application bonafidely with due diligence at an appropriate stage, but he intentionally delayed the filing of such application. Therefore, the impugned order deserves to be set aside and application be dismissed. It has been further submitted that at this stage, son of the defendant namely Ravi should not be allowed to be impleaded as defendant no.2 in the suit. Reliance in support of this contention has been placed on a judgment passed by a Co-ordinate Bench of this Court in **Akki Oswal Trust (Reqd.) and others vs. M/s Jainson Hosiery Industries and another – C. R. No.2165 of 2014**, decided on 24.03.2014.
8. I have heard learned counsel for the petitioner and have gone through the case file.
9. The suit has been filed for permanent injunction and mandatory injunction and the defendant has specifically taken the plea that he has no concern with the suit property as construction has been raised by his son. In our society, a son and a father are not separate persons. They are rather part of the same house and same family. The plaintiff came to know only on the filing of the written statement that suit property is owned by son of the defendant and not defendant. When the property is being constructed by the son of defendant and is owned by him, then of course the son is the proper and necessary

party to the suit in question. The delay is no ground that son of defendant cannot be impleaded in the suit. In case **Akki Oswal Trust (supra)**, rent petition was filed against the firm and all the partners were not joined. So, it was held therein that after the evidence has started, the said application for impleadment of a party was not maintainable. The said judgment is not attracted to the facts and circumstances of the present case. **10.** In view of the above discussion, I do not find any illegality in the impugned order passed by learned Trial Court, thereby ordering impleadment of son of the defendant namely Ravi as defendant no.2 in the suit. No ground for interference is made out. Therefore, the present revision

petition is found to be without any merit and the same is accordingly dismissed in limine.

**11.** Pending applications, if any, shall stand disposed of along with this judgment.

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