

HIGH COURT OF PUNJAB AND HARYANA**Bench: JUSTICE ALKA SARIN****Date of Decision: 13.02.2024**

CR-5900-2022 (O&M)

Hari Ram ... Petitioner(s)**Versus****Sitaram & Ors. ... Respondent(s)****Legislation and Rules:**

Article 227 of the Constitution of India

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

Section 181 of the Haryana Municipal Act, 1973

Subject: Revision petition challenging an order that dismissed a plea for impleadment as a defendant in a suit and an interim injunction restraining the demolition of alleged encroachment.

Headnotes:

Civil Procedure – Impleadment of Parties – Order 1 Rule 10 of CPC –High Court considered the petitioner's application for impleadment as a defendant in a suit concerning encroachment and issuance of notice under Section 181 of the Haryana Municipal Act, 1973. The Court assessed the necessity and relevance of the petitioner's participation in the suit. [Para 1, 6]

Challenge to Impleadment Refusal – Dismissal – The High Court upheld the Trial Court's decision, finding that the petitioner was neither a necessary nor a proper party to the suit. The Court emphasized that the Municipal Committee, being a statutory body and the issuer of the impugned notice, was adequately representing the matters in question. [Para 6]

Contention of Collusion – Rejected – The Court dismissed the petitioner's allegations of collusion between the plaintiff-respondent and the Municipal Committee, citing lack of substantive evidence. The Court expressed confidence in the Municipal Committee's ability to adequately contest the suit. [Para 6]

Non-maintainability of Challenge to Interim Injunction – The Court deemed the challenge to the interim injunction order as non-maintainable, following the dismissal of the petitioner's application for impleadment. [Para 7]

Decision – The High Court dismissed the revision petition, finding it devoid of merit and disposed of any pending applications related to the case. [Para 8]

Referred Cases:

- Gurnam Singh & Ors. vs. Hakam Singh & Ors. [2020(2) PLR 406]
- Rajiv Goel vs. Sohan Lal Khosla [AIR 2010 Pb. 111]
- Ranbir Singh vs. Municipal Corporation Rohtak & Ors. [2019(3) PLR 362]

Representing Advocates:

Mr. Devender Arya for the petitioner.

Mr. Gaurav Sethi for respondent No.1.

Mr. Vasu Gupta and Ms. Bani Chhibber Mahajan for respondents No.2 and 3.

ALKA SARIN, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 13.10.2022 (Annexure P-4) whereby the application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) for being impleaded as a defendant in the suit has been dismissed, as also for challenging the order dated 26.05.2022 (Annexure P-5) whereby the interim injunction has been granted in favour of the plaintiff-respondent No.1 restraining the defendantrespondent Nos.2 and 3 not to demolish the encroachment except in due course of law till the filing of the written statement.
2. The case set up in the application (Annexure P-2) is that the plaintiff-respondent No.1 has filed a suit by concealing facts and in connivance with the Municipal Committee, Mahendergarh. It is averred in the application that between the house of the plaintiff-respondent No.1 and the petitioner herein,

there is a 6 feet wide and almost 27-28 feet long street of the Municipal Committee which is a part of Street No.22 of the Municipal Committee and on the said street the plaintiff-respondent No.1 had made paved road/street by putting soil etc. and that he had encroached upon the property of the Municipal Committee. It is further the case set up that the petitioner had given a complaint to the Municipal Committee and after which action was taken and a notice under Section 181 of the Haryana Municipal Act, 1973 was issued regarding removal/demolition of the illegal encroachment by the plaintiff-respondent No.1. It was further averred that the plaintiff-respondent No.1 is a smart and clever person and that the suit has been filed in connivance with the Municipal Committee and hence it was necessary for the petitioner to be impleaded as a party. The plaintiff-respondent No.1 filed a reply (Annexure P-3) and contested the application. The Trial Court vide the impugned order dated 13.10.2022 (Annexure P-4) held that there is no merit in the contention of the petitioner herein and that the suit filed by the plaintiff-respondent No.1 was challenging the notice issued under Section 181 of the Haryana Municipal Act, 1973 and the Court had to see whether the impugned notice was valid or not. It was further held that the petitioner was neither a necessary nor proper party and dismissed the application. Hence, the present civil revision petition.

3. Learned counsel for the petitioner would contend that the petitioner is a necessary party in the present case as the plaintiff-respondent No.1 is a clever person and he in connivance with the Municipal Committee has filed the present suit and that the petitioner is the best person to assist the Court in the present case since the complaint was made by the petitioner herein and it is on the basis of the complaint that the notice under Section 181 of the Haryana Municipal Act, 1973 has been issued. He has also placed reliance on *Gurnam Singh & Ors. vs. Hakam Singh & Ors.* [2020(2) PLR 406], Rajiv

Goel vs. Sohan Lal Khosla [AIR 2010 Pb. 111] and Ranbir Singh vs. Municipal Corporation Rohtak & Ors. [2019(3) PLR 362].

4. Per contra, learned counsel for the respondents have contended that the order dated 13.10.2022 has rightly been passed as the petitioner is not a necessary party in the suit as the suit is only for declaration challenging the notice under Section 181 of the Haryana Municipal Act, 1973 issued by the Municipal Committee. Moreover, a plaintiff is the master of his suit and is the best person to decide whom he wants to proceed against.
5. I have heard the learned counsel for the parties.
6. In the present case the plaintiff-respondent No.1 had filed a suit for declaration against the defendant-respondent Nos.2 and 3 (Municipal Committee) to the effect that the notice issued under Section 181 of the Haryana Municipal Act, 1973 was absolutely illegal, wrong and against the provisions of the Haryana Municipal Act, 1973. The petitioner filed an application for being impleaded as a party stating therein that it is on his complaint that the notice was issued to the plaintiff-respondent No.1 under Section 181 of the Haryana Municipal Act, 1973. The petitioner claims to be a better person to assist the Court rather than the defendant-respondent Nos.2 and 3 (Municipal Committee) who had issued the notice under Section 181 of the Haryana Municipal Act, 1973. The defendant-respondent Nos.2 and 3 found that there had been encroachment on the rasta and thereafter the notice was issued to the plaintiff-respondent No.1 under Section 181 of the Haryana Municipal Act, 1973. Had there been any connivance between the two, no notice would have been issued at the outset under Section 181 of the Haryana Municipal Act 1973. There is nothing on the record to even remotely suggest that there has been any collusion between the plaintiff-respondent No.1 and the defendant-respondent Nos.2 and 3. The Trial Court has rightly found that the petitioner is neither a proper nor a necessary party.

The Municipal Committee which has issued the notice has been impleaded and would contest the suit. There is no reason for this Court to conclude that there has been any connivance between the plaintiffrespondent No.1 and the defendant-respondent Nos.2 and 3. The argument raised by the learned counsel for the petitioner that the Municipal Committee may collude with the plaintiff-respondent No.1 is bereft of any material on the record. This Court is sanguine that the Municipal Committee, being a statutory body, would contest the suit to its logical end and would assist the Trial Court in proper adjudication of the matter. Further, the plaintiffrespondent No.1 is not seeking any relief against the petitioner in his suit. The judgements cited are distinguishable on facts as the suit is not one which cannot be decided in the absence of the petitioner.

7. The challenge to the order dated 26.05.2022 (Annexure P-5) would not be maintainable inasmuch as the application of the petitionerrespondent No.1 for being impleaded as a party itself stands dismissed and the challenge to the same has also not found favour with this Court.
8. In view of the above, the present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

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