

Kewal Singh, plaintiff filed a suit for declaration and permanent injunction claiming ownership over the land measuring 28 kanals situated within the revenue estate of Village Veerewala Kalan, Tehsil and District Faridkot and seeking a restraint order for interfering in his possession against defendants in the suit.

It is not in dispute that the property in dispute was originally owned by one Hari Singh son of Kunda Singh. Applicants who are the real brothers and are sons of Sher Singh brother of Hari Singh, filed an application for impleadment as party/respondents in the suit on the ground that applicant Ninder Singh alias Narinder Singh is one of the beneficiaries under the registered will executed by late Hari Singh in his favour and in favour of one Kewal Singh. They also pleaded that Kewal Singh, plaintiff in connivance with the revenue officials got the entry in Khasra Girdawari in his favour illegally by impersonating Hari Singh. According to the applicants/petitioners, Hari Singh was issueless. From the pedigree-table shown in the memo of revision and as per the averments made therein, it appears that after the death of Hari Singh who died issueless, his share devolved upon the collaterals including Sher Singh. Sher Singh executed a will in favour of the applicants. Sher Singh had two sons, namely, Joginder Singh and applicant-Ninder Singh. Thus, Kewal Singh and Jagtar Singh are grand sons of Sher Singh whereas Ninder Singh is son of Sher Singh. They are in the same lineage. The applicants/petitioners are also claiming the right over the land in question, rather Jagtar Singh claims to be equally placed with Kewal Singh, both being beneficiaries under the will executed by Hari Singh, the original owner of the property. The trial court has rejected the application of the applicants/petitioners on the ground that they can seek separate remedy in a court of law. This observation was made on the basis of the statement of the plaintiff that he does not seek any relief against the applicants. The

trial court accordingly observed that the plaintiff cannot be forced to make applicants as party/respondents.

I have heard the learned counsel for the parties. It is not in dispute that the plaintiff is dominant *lit us* and he has choice to implead the parties as defendants. The question which falls for consideration is whether the applicants are necessary and proper parties to the suit and also whether the right of the parties to the suit can be effectively and conclusively decided in absence of the applicants? Order 1 Rule 10 (2) of the CPC empowers the court to struck off or add parties. The test envisaged under this provision is as to whether a person ought to be joined as a party to enable the court to effectively and conclusively adjudicate upon and settle all the questions involved in the suit. From the impugned order, it appears that the trial court has not rejected the application on the ground that the presence of the applicants is not necessary for effective adjudication of the controversy involved in the suit. As a matter of fact, the trial court has not considered this aspect of the matter which provides the basis for impleading a person as a party or declining such a prayer. Prayer of the applicants has been rejected only on the ground that the plaintiff does not want them to be a party and they have a remedy by way of separate suit. This approach of the trial court does not seem to be in consonance with the requirements of Order 1 Rule 10(2) of the CPC. In view of the clear statement in the application that the applicants have a right/interest in the suit property, I think that the applicants are necessary parties or at least proper parties to the lis as their presence

will enable the court to decide the issues involved in the suit effectively and conclusively. Apart from above, it will avoid multiplicity of suits/proceedings and thereby prevent contradictory decisions.

Under the above circumstances, I allow this Revision and set aside the impugned order dated 21.11.2006 passed by Additional Civil Judge (Sr.Division), Faridkot. The applicants are directed to be impleaded as parties/defendants in the suit. No order as to costs.

(PERMOD KOHLI)
JUDGE

28.9.2007
MFK

NOTE:Whether to be referred to the Reporter or not:NO