

**2023 STPL(WEB) 4 HP  
HIGH COURT OF HIMACHAL PRADESH**

(MS. JYOTSNA REWAL DUA, J.)

**MUKHTYAR SINGH THROUGH HIS L.RS.**

Petitioners/Plaintiffs

*VERSUS*

**HARBANS SINGH AND OTHERS**

Respondents/Defendants

CMPMO No. 43 of 2021-Decided on 05.07.2023

**(A) Practice and Procedure – Three different orders on different dates in separate applications, Challenged in one order – Maintainability - Held:** orders passed by the learned Trial Court on three different dates in three separate applications moved by plaintiffs were required to be challenged by moving separate petitions. Instant composite petition assailing all the above three different orders cannot be held to be maintainable. However, considering that civil suit is pending ever since 2011, the ill filed petition is being considered on the merits of its challenge to the impugned orders.

(Para 1)

**(B) Code of Civil Procedure, 1908 - Order 1 Rule 10 – Impleadment of Party – Successive applications – Dismissal of three successive applications on same point – Fourth applications - Held:** Once plaintiffs' previous application seeking impleadment of Ishan Kumar as defendant in the civil suit had been dismissed not once, not twice, but thrice and once by the Hon'ble Supreme Court, there arose no question of allowing same prayer of the plaintiffs merely because it was his fourth chance. The plaintiffs are guilty of abusing process of the Court

(Para 2)

**(C) Code of Civil Procedure, 1908 - Order 1 Rule 10–Impleadment of Party - Incorrect factual averment– Reason for impleadment averred that petitioner has no knowledge of fact of transfer of land by party sought to implead – Record shows that petitioner was in knowledge of fact of transfer of land as legal notice in this regard served on him – Held:** The application now being filed for impleading Anik Katoch as party to the civil suit was based upon incorrect factual averment that plaintiffs were not aware of the transfer of the land. Learned Trial Court rightly dismissed the application.

(Para 3)

**(D) Code of Civil Procedure, 1908 - Order 1 Rule 10, Order 6 Rule 17 – Amendment of Plaint – Not allowed – Reason for amendment and impleadment of party related to Gift deed – Gift deed made from already portioned land which is in possession of respondent sought to implead - According to the respondents-defendants, in case they (respondents-defendants) have transferred some land out of their share, that would not give cause to the plaintiffs to add those transferees as parties to the case. It is not the case pleaded in the application that transfer by defendants is not from the portion of the land which came to their share after partition. Held:** Learned Trial Court did not commit any error in dismissing the application.

(Para 4)

**(E) Cost – Repeated applications - Repeated institutions of applications by the petitioners, many of them for the same purpose for which reliefs have already been declined to them by the Courts earlier, the civil suit filed in the year 2011 is still pending adjudication. Held:** The petitioners are guilty of abusing the process of the Court. Petition dismissed with costs of Rs. 10,000/-.

(Para 5)

Advocate(s): For the Petitioner/Plaintiff : Mr. Bhupender Gupta, Senior Advocate, With Mr. Janesh Gupta, Advocate

For the Respondents/Defendants: Mr. Ajay Sharma, Senior Advocate with Mr. Ajay Thakur, Advocate, for R1-3 Respondents No. 4, 6, 8(a) to 8(c), 9 to 11 ex-parte. R-7 deleted from the array of parties

**JUDGMENT**

**Jyotsna Rewal Dua, Judge–**Challenge in this composite petition is to three separate orders passed by learned Trial Court on three different dates i.e. 16.01.2021, 28.01.2021 and 18.02.2021 whereby three different applications moved by the plaintiffs were dismissed. It has to be stated at the very outset that three separate orders passed by the learned Trial Court on three different dates in three separate applications moved by plaintiffs were required to be challenged by moving separate petitions. Instant

composite petition assailing all the above three different orders cannot be held to be maintainable. However, considering that civil suit is pending ever since 2011, the ill filed petition is being considered on the merits of its challenge to the impugned orders.

2. The order dated 16.01.2021 In terms of this order, learned trial Court dismissed an application moved by the petitioners-plaintiffs under Order 1 Rule 10 of the Code of Civil Procedure (CPC) for impleading one Ishan Katoch as defendant No. 12 in this suit. The stated reason for moving this application was that defendant No. 2 had transferred part of suit land in Khasra No. 190 by way of registered sale deed prior to the institution of the present suit and also transferred some lands during the pendency of the suit to his son Ishan Katoch. The plaintiffs tried to impress in the application that for adjudicating the questions involved in the civil suit, impleadment of Ishan Katoch in the civil suit was necessary. Learned trial Court did not find force in the contentions of the plaintiffs and dismissed the application on 16.01.2021. I have heard learned Senior Counsel on both sides. In my considered view, for the following reasons, there is no merit in plaintiffs' petition against this order, rather moving of the application was itself an abuse of process of the Court by the plaintiffs.

2(a) It is not in dispute that prior to the instant application moved by the plaintiffs seeking impleadment of Ishan Katoch as defendant in the civil suit, they had earlier also moved three similar applications. One such application moved under Order 1 Rule 10 CPC was decided by the learned Trial Court on 20.08.2013. Second such application moved by the plaintiffs for the same purpose under Order 1 Rule 10 CPC was dismissed by the learned Additional District Judge-1, Kangra at Dharamshala on 28.05.2015 as not maintainable. The plaintiffs thereafter moved yet another application under Order 6 Rule 17 read with Order 1 Rule 10 CPC with the prayer for amendment of the plaint and also to implead Ishan Katoch as a defendant in the present suit. The application was allowed by the learned Trial Court vide order dated 06.06.2019. The defendant assailed this order in Civil Revision No. 107 of 2019 before this Court. Civil Revision petition was allowed on 03.10.2019. The impugned order passed by the learned trial Court on 06.06.2019 was set aside. The order dated 03.10.2019 dismissing plaintiffs' composite application under Order 6 Rule 17 read with Order 1 Rule 10 CPC for impleadment of Ishan Katoch has been affirmed by the Hon'ble Apex Court on 31.01.2020 passed in SLP No. 425 of 2020. It is also not in dispute that while disposing of the matter, Hon'ble Apex Court looking to the age of the suit, has ordered the learned Trial Court to decide the civil suit within six months.

2(b) Notwithstanding dismissal of plaintiffs' three successive applications seeking impleadment of Ishan Katoch as party defendant, the plaintiffs yet again moved another application on 14.01.2021 under Order 1 Rule 10 CPC seeking to implead Ishan Katoch as defendant in the civil suit. Once plaintiffs' previous application seeking impleadment of Ishan Kumar as defendant in the civil suit had been dismissed not once, not twice, but thrice and once by the Hon'ble Supreme Court, there arose no question of allowing same prayer of the plaintiffs merely because it was his fourth chance. The plaintiffs are guilty of abusing process of the Court by instituting repeated applications for the same prayer which has already been adjudicated upon and rejected. I find no infirmity in the order passed by the learned trial Court on 16.01.2021 dismissing plaintiffs' application for impleading Ishan Katoch.

3. The order dated 28.01.2021 By this order, learned trial Court dismissed another application moved by the plaintiffs under Order 1 Rule 10 CPC for impleading S/Shri Anik Katoch and the Manager, State Bank of India Kandraur as defendant in the civil suit. Plaintiffs' stated reason for moving this application was that defendant No. 1 had executed a registered sale deed on 21.11.2017 in favour of his son Anik Katoch. This sale deed pertained to part of suit land comprised in Khasra No. 190. The application further averred that during pendency of the civil suit, Ishan Katoch, s/o Balwant Singh had mortgaged part of suit land with State Bank of India, Branch Kandrauri through registered mortgage deed without possession. Therefore, it was stressed that Anik Katoch and Manager of State Bank of India, Kandrauri were required to be impleaded in the civil suit. I have heard learned Senior Counsel for the parties. Learned trial Court has taken note of the fact that factum of transfer of land to Anik Katoch was well in the notice of the plaintiffs as legal notice dated 30.07.2019 was served on them. The plaintiffs had filed another civil suit in the year 2020 being Civil Suit No. 92 of 2020 with respect to land in question. The said suit is stated to be pending adjudication before the learned Trial Court. Anik Katoch has been impleaded as party in that civil suit. The obvious inference is that the plaintiffs were very well aware of the transfer of the land in the name of Anik Katoch on 30.07.2019 when notice was issued and later on in the year 2020, when another civil suit was filed by them. The application now being filed for impleading Anik Katoch as party to the civil suit was based upon incorrect factual averment that plaintiffs were not aware of the transfer of the land. Learned Trial Court rightly dismissed the application.

4. The order dated 18.02.2021 This is yet another composite application moved by the plaintiffs under Order 1 Rule 10 and Order 6 Rule 17 read with Section 151 CPC for impleading Smt. Kamini Pathania as also for amending the plaint. The given reason for moving the application is that during pendency of the suit, defendant No. 2 had executed a gift deed dated 10.09.2020 in respect of Khasra No. 190 to the extent of 250/9795 share in favour of Smt. Kamini Pathania. Learned trial Court dismissed this application vide order dated 18.02.2021. I have heard learned counsel for both sides. The pleadings on record prima-facie show that before institution of the present civil suit on 24.12.2011, the plaintiffs had filed an application

for partition of the joint land before the Assistant Collector 1st grade. The said partition case bearing No. 27/1992 was finally decided on 23.02.1998. The factum of partition was implemented in the revenue record after carrying out of partition in the year 2009. In fact, this aspect has also been taken note of by this Court in the judgment dated 03.10.2019 passed in Civil Revision No. 107 of 2019. According to the respondents, parties came in possession of their respective shares in the suit land after partition in the year 2009. According to the respondents-defendants, in case they (respondents-defendants) have transferred some land out of their share, that would not give cause to the plaintiffs to add those transferees as parties to the case. It is not the case pleaded in the application that transfer by defendants is not from the portion of the land which came to their share after partition. Learned Trial Court did not commit any error in dismissing the application.

5. Hon'ble Apex Court while dismissing SLP No. 425 of 2020 instituted by the petitioners-plaintiffs has already directed the learned Trial Court to decide the civil suit within six months from 31.01.2020. Because of repeated institutions of applications by the plaintiffs (petitioners), many of them for the same purpose for which reliefs have already been declined to them by the Courts earlier, the civil suit filed in the year 2011 is still pending adjudication. The petitioners-plaintiffs are guilty of abusing the process of the Court. Hence, this petition is dismissed with costs of Rs. 10,000/-. The cost shall be payable to Himachal Pradesh State Legal Services Authority, Shimla within three weeks from today. Pending applications, if any, also stand disposed of. The observations made above shall be confined to the adjudication of this petition and shall not be construed as an opinion on the merits of the main matter. Learned trial Court shall decide the matter uninfluenced by the above observations.

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