

**In the Court of Shri Harbans Singh Lekhi,
Additional District Judge, Faridkot
(Exercising the powers of Tribunal under the Wakf Act)
(Unique Identification No.PB0113)**

Case Details	
Case No.	05 of 13.5.2020
CIS No.	CS/7/2020
CNR No	PBFD01-001365-2020
Date of order	1.9.2020

1. Ravinder Singh Cheema, aged about 59 years, son of Mohinder Singh son of Ujjagar Singh;
2. Baljinder Kaur @ Baljit Kaur, aged about 55 years, wife of Ravinder Singh Cheema son of Mohinder Singh;
both residents of House No.376, Housefed Colony, Dabwali Road, Bathinda, Tehsil and District Bathinda.

.....Plaintiffs.

Versus

1. Chief Executive Officer, Punjab Wakf Board, SCO No.1062/63, Sector 22-B, Chandigarh.
2. Estate Officer, Punjab Wakf Board, branch at Dargah Hajji Rattan, Bathinda.

.....Defendants

Suit for permanent injunction and mandatory injunction.

***Application under Order 1 Rule 10 CPC for impleading
Municipal Corporation Bathinda, as defendant No.3.***

AND

Application under Order 1 Rule 10 CPC read with Section

151 CPC for arraying the Municipal Corporation Bathinda, as defendant No.3.

Present: Sh.Karamjit Singh Dhaliwal, Advocate-counsel for the plaintiffs.
S/Shri Ashu Mittal and Vinod Maini, Advocates, counsel for defendants No.1 and 2/applicants.
Sh.Vinod Kumar Monga, Advocate, counsel for applicant Municipal Corporation, Bathinda.
Through Video conferencing (Vidyodesktp app.).

ORDER:-

This order shall dispose of two applications i.e. one under Order 1 Rule 10 CPC, moved by defendants No.1 and 2, for impleading Municipal Corporation Bathinda, as defendant No.3 and another application filed by Municipal Corporation, Bathinda, for arraying it as defendant No.3.

2. It is averred in the application filed by defendants No.1 and 2 that the plaintiffs have filed false suit for permanent injunction for restraining defendants from dispossessing them from the suit land, whereas plaintiffs are not in possession of the suit land. In fact, possession of the suit land is with Municipal Corporation Bathinda and under the garb of present suit, plaintiffs want to grab the suit land. To properly and finally adjudicate the matter, Municipal Corporation Bathinda, is required to be impleaded as defendant No.3, as if the present application is not allowed, then plaintiffs will succeed to deceive the Court as well as defendants. To avoid multiplicity of litigation, it is necessary to implead Municipal Corporation Bathinda, as defendant No.3. If Municipal Corporation is not made a party to the suit, then plaintiffs

will further mislead the Court and will succeed in procuring decree, which would cause irreparable loss to the defendants. Lastly, it is prayed that application in hand, may be allowed.

3. Plaintiffs filed reply taking preliminary objections that application is not maintainable in the present form as the same has not been filed by Municipal Corporation Bathinda and defendants cannot file such application as same is always supposed to file by third party. It is further submitted that there is no mention in the written statement filed by defendants that any separate application under Order 1 rule 10 CPC, is being filed. In fact, the present application has been moved only to frustrate the decision on application under Order 39 Rule 1 and 2 CPC, in favour of the plaintiffs. Further more, the present application is neither verified nor supported with any affidavit and as such, present application is liable to be dismissed. On merits, filing of suit for permanent injunction, has been admitted, but it has been pleaded that plaintiffs are well in legal possession of the suit land. It is further submitted that Municipal Corporation Bathinda, has no concern with the suit land and as such, there is no need to make it as party. Municipal Corporation Bathinda, is neither owner nor tenant nor allottee and nor in possession of the suit land, while the plaintiffs are well in lawful possession of the suit land. It is further submitted that the present application has been filed with malafide intention, just to harass and harm the plaintiffs. Municipal Corporation Bathinda, is not a necessary party to the present suit and as such, there is no need to make it as party. Lastly, a prayer for dismissal of

the application was made.

4. Municipal Corporation, Bathinda, filed application on the averments that the plaintiffs have claimed themselves to be lessees under defendants No.1 and 2, with regard to land measuring 16 kanals as fully detailed in the plaint and also claimed that they are in possession of 16 kanals of land and already existing defendants No.1 and 2 should be restrained from dispossessing the plaintiffs from said land. It is further averred in the application that in fact, defendants No.1 and 2 are owners of above mentioned 16 kanals of land, but they had leased out 82 kanals 12 marlas of land comprising in khasra No.37/3/8-0, 4/5-16, 5/0-17, 8/1-17, 34/24min/6-0, 25min/6-0, 24min/2-0, 25min/2-0, 37/1/2/4-4, 2/8-0, 9/5-16, 10/8-0, 11/1-17, 38/6/8-0, 7/1/6-8, 8/1/2/0-1, 14/2/1/1-18, 15/5-18, situated at Haji Rattan, Mansa Road, Bathinda, in favour of the applicant and said lease was approved by Head office of Wakf Board, vide order No.49/legal/16634/2020/20922 dated 04.06.2020, for which applicant had paid a total amount of Rs.9,95,381/- to Wakf Board on account of rent and other expenses. It is further averred in the application that Wakf Board had delivered the actual physical possession of 82 kanals 12 marlas of land to the applicant and applicant is constructing a rain water storage tank in said land through contractor Baba Balwant Muni Cooperative L&C Society Limited, for which estimated costs is Rs.20.23 lacs. It is further averred in the application that plaintiffs have filed suit on the basis of false averments and have made absolutely mis-statement regarding lease and possession of land in dispute. In fact, plaintiffs are not

in possession of any portion of 82 kanals 12 marlas, which had been leased out in favour of applicant by Wakf Board. The applicant is in absolute possession of 82 kanals 12 marlas of land including said 16 kanals. It is further averred in the application that in view of above facts, applicant is also a necessary party in the present suit and suit cannot be decided in its absence as if any order is passed in favour of plaintiffs, then applicant is likely to be affected. Further, it is prayed that applicant being necessary party, is liable to be arrayed as defendant No.3 so as to afford an opportunity of being heard and defend the suit and as such present application may be allowed.

5. Plaintiffs filed reply to the above application taking preliminary objections that application is not maintainable in the present form as an application under Order 1 Rule 10 CPC, moved by defendants No.1 and 2, is already on the file and plaintiffs had already filed reply to said application. As such, second application/present application is not maintainable. It is further submitted that Municipal Corporation Bathinda, has no concern with the suit property and as such, there is no need to make it as party. In fact, the present application has been moved only to frustrate the decision on application under Order 39 Rule 1 and 2 CPC, in favour of the plaintiffs, in connivance with defendants No.1 and 2. Further more, the present application has neither verified nor supported with any affidavit, which is mandatory as per the provisions of CPC and as such, present application is liable to be dismissed. On merits, it is admitted that plaintiffs have claimed themselves to be lessees under

defendants No.1 and 2, with regard to suit land and also claimed that they are well in possession of suit land. However, it is denied that defendants No.1 and 2 have leased out land measuring 82 kanals 12 marlas to Municipal Corporation, Bathinda. It is admitted that defendants No.1 and 2 are owners of the suit land, but it is submitted that plaintiffs are in possession of the same and Municipal Corporation Bathinda, has no concern with the suit land. It is submitted that the Tribunal has powers to direct supervision upon lands/properties of Wakf Board, under Wakf Act. Defendants No.1 and 2 Wakf Board had not obtained any ejectment order against the plaintiffs, from the Tribunal and as such, without permission of Tribunal, Wakf Board neither can cancel the lease-deed of plaintiffs nor can allot any new lease-deed to anybody else. It is further submitted that plaintiffs had filed the suit on true and legal facts. Moreover, a mandatory notice under Section 89 under Wakf Act, was also served to defendants No.1 and 2, regarding which no reply was filed by defendants No.1 and 2. It is further submitted that Municipal Corporation Bathinda, has no concern with the suit property and as such, it shall not suffer in any way. It is further submitted that the plaintiffs are entitled to get the relief for permanent injunction, as prayed. Moreover, equity and justice demand that present application should be dismissed, being false and baseless. It is further submitted that Municipal Corporation Bathinda, is not a necessary party and as such, there is no need to make it party. Lastly, a prayer for dismissal of the application was made.

6. I have heard the learned counsel for the parties and the

applicant, through Video Conferencing (Vidyo Desktop app) facility on account of outbreak of Covid-19, and have carefully gone through the record on file.

7. Sh.Vinod Kumar Monga, Advocate, learned counsel for the applicant Municipal Corporation, Bathinda, argued that plaintiffs have wrongly filed the suit claiming themselves to be lessee under defendants No.1 and 2 with regard to suit land, whereas Municipal Corporation, Bathinda, is in possession over the suit property and is constructing a rain water storage tank in the said land through contractor, therefore, the Municipal Corporation, Bathinda, is necessary party in the present suit and suit cannot be decided in its absence. So, applicant be arrayed as defendant No.3 in the present suit. In support of his contentions he placed reliance upon **Anit Mittal Versus Ramesh Chand and others, 2017 (Suppl.) Civil Court cases 08 (P&H)**, wherein it has been held by the Hon'ble Punjab & Haryana High Court that a person may be impleaded as a party defendant though no relief is claimed against him, provided his presence is necessary for a complete and final decision on question involved in suit. Reliance was also placed upon **Dharminder Singh Versus Kailash Chander Gupta and others 2016(4) Civil Court Cases 042 (P&H)**, wherein it has been held by the Hon'ble Punjab & Haryana High Court that necessary party can be impleaded at any stage of the suit for effective adjudication of controversy involved in the suit. Mere fact that application is moved at belated stage, is no ground to decline impleadment. Reliance was also placed upon **Pankajbhai Rameshbhai**

Zalavadia Versus Jethabhai Kalabhai Zalavadiya (deceased) through Lrs and others 2017(Suppl.) Civil Court Cases 756 (SC), wherein it has been held by the Hon'ble Supreme Court that Court can add any person as a party at any stage of the proceedings, if the person whose presence is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. It has been further held that Court has wide discretion to deal with a situation which may result in prejudicing the interest of the effected party if not impleaded in the suit, and where the impleadment of said party is necessary and vital for the decision of the suit.

8. Learned counsel for the defendants No.1 and 2/ applicants have argued that plaintiffs have wrongly filed the present suit for permanent injunction claiming themselves in possession of the suit land as lessee merely relying upon the entry made in the revenue record, whereas, suit land is in possession of Municipal Corporation, Bathinda, and plaintiffs under the garb of present suit intend to grab the suit land. They argued that Municipal Corporation, Bathinda, is necessary party in the present case and without impleading it, no effective decree can be passed, so, the application filed by defendants No.1 and 2 as well as by the Municipal Corporation, Bathinda, be allowed.

9. On the other hand, learned counsel for the plaintiffs argued that plaintiffs are in possession of the suit land as lessee since long and Municipal Corporation, Bathinda, has no concern with the same. He further

argued that no relief has been claimed by the plaintiffs against Municipal Corporation, Bathinda, therefore, Municipal Corporation, Bathinda, is not a necessary party in the present case and both the applications are liable to be dismissed. In support of his contentions, he placed reliance upon ***Gurmeet Singh Bhatia Versus Kiran Kant Robinson and others 2019(3) RCR(Civil) 809***, wherein it has been held by the Hon'ble Apex Court that plaintiff cannot be forced to add parties against whom he does not want to fight. It has been further held that there are two tests for seeking to be impleaded as party in suit. There must be right to some relief against such party in respect of controversies involved in proceedings. No effective decree can be passed in the absence of such party.

10. I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties and applicant.

11. Perusal of record reveals that plaintiffs have filed this suit for permanent injunction restraining the defendants from interfering in their possession over the suit land and mandatory injunction directing them to issue a receipt to them against amount of Rs.96000/- deposited by them with the defendants, through bank draft No.288553 dated 2.3.2020 issued by Oriental Bank of Commerce, as lease amount of the suit property, for the period 2014-2015, 2019-2020 and have claimed their possession over the suit land since long, as lessee and have produced on record the revenue record. However, the defendants have denied the version of the plaintiffs and submitted that the plaintiffs are trying to take benefit of wrong entries of Khasra girdawaries. Otherwise, after expiry of lease

period, the plaintiffs were not entitled to remain in possession of the suit land. They have also submitted that plaintiffs deposited the lease money upto 2012-2013 and thereafter, they did not get extended the lease deed and never paid the lease amount inspite of requests by the defendants and at last, the plaintiffs delivered the possession of the suit land to the defendants and now possession of the suit land is with Municipal Corporation, Bathinda. Municipal Corporation, Bathinda/ applicant has also placed on record the documents showing its possession over the suit land. Though no relief has been claimed by the plaintiffs against Municipal Corporation, Bathinda, but in view of the version of the defendants and applicant, the presence of Municipal Corporation, Bathinda, in the present case, is necessary for a complete and final decision on the question involved in the suit and no effective decree can be passed without impleading Municipal Corporation, Bathinda, as a party in the present suit, who is necessary party. In such a scenario the ruling referred by the learned counsel for the plaintiffs is not applicable to the facts of the present case and both the applications under Order 1 Rule 10 CPC deserve to be allowed.

12. Resultantly, both the applications under Order 1 Rule 10 CPC are allowed and Municipal Corporation, Bathinda, is impleaded as defendant No.3 in the present case.

Pronounced.
Dated:- 1.9.2020.

(Harbans Singh Lekhi)
Additional District Judge-cum-
Chairman, Wakf Tribunal,
Faridkot.
(Unique Identification No.PB0113)

Sonia Devi

Present: Sh.Karamjit Singh Dhaliwal, Advocate-counsel for the plaintiffs.
S/Shri Ashu Mittal and Vinod Maini, Advocates, counsel for defendants No.1 and 2/applicants.
Sh.Vinod Kumar Monga, Advocate, counsel for applicant Municipal Corporation, Bathinda.
Through Video conferencing (Vidyodesktop app.).

Arguments on both the applications i.e. one under Order 1 Rule 10 CPC, moved by defendants No.1 and 2, for impleading Municipal Corporation Bathinda, as defendant No.3 and another application filed by Municipal Corporation, Bathinda, for arraying it as defendant No.3, heard. Vide my separate detailed order of even date both the applications have been allowed.

Now amended plaint be filed on 7.9.2020.

Pronounced.
Dated:- 1.9.2020.

(Harbans Singh Lekhi)
Additional District Judge-cum-
Chairman, Wakf Tribunal,
Faridkot.
(Unique Identification No.PB0113)

Sonia Devi