

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.6398 of 2015 (O&M)

Date of Decision: September 28, 2015

Ram Asra Singh

...Petitioner

Versus

Avtar Singh Dhariwal @ Rajinder Singh Dhariwal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.D.K.Bhatti, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

The challenge in the present revision petition is to the impugned order dated 20.8.2015, whereby the application filed by plaintiff No.1-Harbinder Kaur Dhariwal, who was sued through General Power of Attorney, who is none else but petitioner-plaintiff No.2, has been allowed and she has been allowed to abandon her claim in the suit and permitted to be added as defendant No.21.

Mr.D.K.Bhatti, learned counsel appearing on behalf of the petitioner submits that as per the provisions of Order 23, Rule 1 and 1-A CPC, it is only the defendant who can be transposed as plaintiff and not the plaintiff, without the consent of plaintiff No.2. The application could not have been allowed and, thus, there is illegality and perversity in the

impugned order.

I have heard the learned counsel for the petitioner and appraised the paper book.

The petitioner filed a suit for declaration challenging mutation bearing No.2602 vis-a-vis the inheritance of late Randhir Singh Dhariwal, husband of Harbinder Kaur Dhariwal, whose application has been allowed and further challenge is to the sale deeds mentioned in the suit.

The application was filed by Harbinder Kaur Dhariwal, who has been arrayed as plaintiff No.1 and the suit was instituted not by her in her own individual capacity but through her attorney Ram Asra Singh-plaintiff No.2 on the premise that she has never given any attorney to him to file such suit and, therefore, sought permission of the Court to abandon her claim in the suit and allowed her to be impleaded as defendant No.21.

It was stated in the application that by filing of the suit by Ram Asra Singh being attorney, has caused wrongful loss to her and her family and wrongful gain to himself in the shadow of alleged forged power of attorney as she is NRI and old lady. The trial Court allowed the application and permitted plaintiff No.1 to abandon her claim in the suit as per the provisions of Order 23 Rule 1 CPC.

As regards the contention that as per Rule 1A of Order 23 CPC, it is only the defendant, who can be transposed as plaintiff, is not tenable, for the reason that heading of the application does not prescribe the exact position of law, but Order 1 Rule 10 CPC permits the Court to either strike or add the name of the defendant of its own or through the application. The trial Court, while exercising the jurisdiction has permitted

Harbinder Kaur Dhaliwal to abandon her claim and add her as defendant No.21. The order cannot be said to have been passed without any jurisdiction. I do not find any illegality and perversity in the impugned order.

The petition is misconceived and devoid of merit. Accordingly, the same is dismissed.

September 28, 2015
ramesh

(AMIT RAWAL)
JUDGE