

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.6508 of 2014

Date of decision: November 30, 2015

Didar Singh @ Dara Singh

-Petitioner

Versus

Ravinder Kaur and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. S.S. Parmar, Advocate
for respondents No.1 and 2.

Mr. Pulkit Dagar, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Plaintiff Didar Singh through his son Jaswinder Singh has assailed order dated 17.05.2014 as well as order dated 02.07.2014 vide which Jaswinder Singh was directed to produce Didar Singh in Court and on account of non-production suit itself was ordered to be dismissed.

[2]. Plaintiff Didar Singh filed suit on the ground that he is of unsound, feeble and sick mind through his son/next friend

Jaswinder Singh.

[3]. Suit is of declaration to the effect that plaintiff is owner in possession of suit land and the sale deed executed by defendant No.2 in favour of defendant No.1 being attorney of the plaintiff dated 01.07.2013 are void and sham transaction. Being fraudulent they are not binding upon the rights of the plaintiff. The alleged sale deed dated 12.07.2013 is claimed to be illegal. A suit for permanent injunction restraining the defendants from dispossessing the plaintiff over the suit land has also been sought as consequential relief.

[4]. First application was filed by defendant No.2-Paramjit Singh under Order 10 Rule 2 CPC seeking direction to Jaswinder Singh to produce Didar Singh plaintiff personally before the Court for inquiry in respect of his mental condition. In the event of non-production of Didar Singh, the suit itself was sought to be dismissed. This application was allowed by the trial Court vide order dated 17.05.2014 on the premise that if Didar Singh plaintiff is living with his son Paramjit Singh then Jaswinder Singh has no right to claim himself to be next friend of Didar Singh. It was opined that it was not the duty of the defendants to produce Didar Singh in Court rather, duty was that of Jaswinder Singh who has filed the suit on behalf of Didar Singh as next friend. Though the tenor of order shows that application was dismissed but in the concluding part, the Court opined and directed Jaswinder Singh to produce Didar Singh

plaintiff in Court in person positively, failing which the suit shall be dismissed.

[5]. Pursuant to order dated 17.05.2014, Jaswinder Singh failed to produce Didar Singh-plaintiff in Court, therefore, as a natural consequence of order dated 17.05.2014 the suit itself was ordered to be dismissed for want of production of Didar Singh for inquiry.

[6]. During course of argument, it has come that Didar Singh was living with the family of Paramjit Singh and has executed power of attorney. In this revision petition, petitioner has assailed both the orders dated 17.05.2014 and 02.07.2014 to submit that even if he failed to produce Didar Singh in court pursuant to order passed by the trial Court but has reasonable explanation in the said context. In the absence of petitioner, when he was away to United Kingdom, Didar Singh was taken away by the family of Paramjit Singh before filing of the suit. In this context, the petitioner has reasonable explanation for not producing the Didar Singh in Court as at that time Didar Singh was not in his custody/company. Even during course of argument, this fact has been admitted by learned counsel for the respondents that Didar Singh was living with the family of Paramjit Singh and he ultimately died during the pendency of present revision petition.

[7]. Having heard the arguments, since Didar Singh has

already expired and after his death legal representatives of Didar Singh including Jaswinder Singh as well as Paramjit Singh have equal right/impleadment in place of plaintiff. The orders passed in the context of production as well as for dismissal of the suit in the event of failure, therefore, in considered opinion of this Court are not legally sustainable. At the most in the event of non-production of Didar Singh as ordered by the Court vide order dated 17.05.2014, an adverse inference could have been drawn against the plaintiff. That inference would have been subjected to final outcome of the suit itself.

[8]. In view of aforesaid, at this stage impugned orders dated 17.05.2014 as well as dated 02.07.2014 passed by Civil Judge (Junior Division), Garshankar are hereby set aside. Since the plaintiff Didar Singh has already expired, legal representatives if they so choose may bring themselves on record as legal representatives of deceased Didar Singh.

[9]. In view of aforesaid facts, this revision petition is disposed of. Both the parties are directed to appear before the trial Court on 19.01.2016.

(RAJ MOHAN SINGH)
JUDGE

November 30, 2015
prince