

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

***CM-3785-CII-2015 in/and
RA-38-CII-2013 in
CR No.4436 of 2011
Date of decision: 25.02.2015***

Harpal Singh

.....Petitioner

versus

Harmohinder Singh and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. N.R. Dahiya, Advocate
for the applicant-petitioner.

Mr. Sanjiv Bansal, Advocate
for the respondents.

G.S. SANDHAWALIA, J. (Oral)

CM-3785-CII-2015

This application has been filed under Order 22 Rule 3 read with Section 151 CPC for bringing on record L.Rs of Harpal Singh.

It has been submitted that Harpal Singh has died on 30.09.2014 leaving behind the legal heirs mentioned in the paragraph No.2 of the application. It has been averred that there is no other legal heir of Harpal Singh. Application has been duly supported by the affidavit of Karamvir Singh son of Harpal Singh (deceased).

Accordingly, application is allowed. The legal heirs mentioned in paragraph No.2 of the application are brought on record for the purpose of pursuing the present revision petition only.

The amended memo of parties is taken on record.

RA-38-CII-2013

The challenge in this review application is to the order dated

15.02.2013, wherein the revision petition was dismissed on the ground of non-maintainability by placing reliance upon the judgment of Apex Court in case of **Rajinder & Company Vs. Union of India and others 2003 (1) RCR (Civil) 755** and judgment of this Court in case of **Civil Revision No. 1873 of 2010 titled as "The Bassi Arkh Scheduled Caste Cooperative Land Owing Socity Ltd. Vs. Atma Singh and others decided on 01.06.2011.**

In the revision petition also the co-ordinate Bench had noticed that two orders dated 16.09..2008 passed by Additional District Judge and order dated 08.05.2011 was under challenge. The reason thus which prevailed with the learned Single Judge was that the revision petition was not maintainable against the report of the Local Commissioner as such. Learned counsel for the petitioner was well justified to say that the order under challenge actually is whereby the objections filed against the report dated 16.04.2010 by the objector-plaintiff has been dismissed by the Civil Judge (Jr. Div.) in a suit which was initially filed for declaration and which was thereafter converted into a suit for partition. The principle of a revision not being maintainable appointed under Order 26 Rule 9 CPC have thus been taken into consideration while deciding the revision petition, whereas the provision of Order 26 Rule 14 were to be kept in mind. Under the said provision Court can vary, confirm or set aside the report of the Local Commissioner or make any such order it shall deem fit.

In such circumstances, an patent error seems to have taken

place while deciding the revision petition on the ground that the revision is not maintainable. Counsel for the petitioner has also submitted that earlier the trial Court had directed that the property should be put to auction, but lower Appellate Court vide judgment dated 16.09.2008 has set aside that part and held that a preliminary decree by metes and bound should be passed.

Accordingly, keeping in view the background and history which has not been noticed by the Co-ordinate Bench while passing the order dated 15.02.2013, this Court is of the view that the order should be reviewed. Accordingly, the said order is reviewed and the revision petition be listed for hearing afresh.

Accordingly, the initial order dated 26.07.2011 whereby further proceedings before the trial Court were stayed comes back into operation.

List on 25.03.2015.

February 25, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE