

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

TA No.680 of 2014.

Date of Decision: 01.09.2015.

Balwinder Singh through L.Rs.

....Applicants.

VERSUS

Rajinder Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rakesh Gupta, Advocate for the applicants.

Respondent No.1 was proceeded against exparte vide order dated 07.04.2015.

Names of respondents No.2(i) and (ii) were removed from the array of respondents vide order dated 07.05.2015.

SNEH PRASHAR, J.

This transfer application under Section 24 of the Code of Civil Procedure (for short, "C.P.C.") had been filed by the applicants-defendants for transfer of civil appeal bearing No.CA/0000929/2014 titled 'Rajinder Singh vs. Balwinder Singh' from the Court of Additional District Judge, Ludhiana to some other Court of competent jurisdiction outside the jurisdiction of District Ludhiana.

Despite receipt of notice, respondent No.1 did not appear to contest the application and was proceeded against exparte vide order dated 07.04.2015.

Comments of the concerned Judicial Officer were called. Shri Sanjiv Joshi, Additional District Judge, Ludhiana, before whom the case is pending, has sent his comments.

The contention of the applicants is that after dismissal of the suit filed by respondent No.1 Rajinder Singh on 03.09.2014, they filed a caveat petition under Section 148-A C.P.C. on 23.09.2014. On institution of appeal by respondent No.1 on 13.10.2014, it was entrusted to the Court of Shri Sanjiv Joshi, Additional District Judge, Ludhiana for 14.10.2014 with a specific note on the index of the grounds of appeal as "caveat attached". The said Court ordered for notice to the respondent for 15.10.2014. However, on the date fixed i.e. 15.10.2014, learned Additional District Judge, Ludhiana, ignoring the caveat and without serving notice on the applicants-caveators, passed the order restraining the applicants from alienating the suit property, The order, being illegal, was challenged by filing a Civil Revision No.7614 of 2014 before this Court, in which the operation of the order dated 15.10.2014 was stayed.

In his comments, learned Additional District Judge has stated that the factum of pendency of caveat did not come to his notice inadvertently. He has also submitted that the inadvertence was result of bonafide mistake and that learned counsel for the appellant also failed to bring the factum of caveat to his notice and the caveat was attached at the

end of the file of the appeal entrusted to him.

Learned counsel for the applicants has filed certified copy of the caption of the appeal which shows that “caveat attached” was written on the very first page of the caption. Therefore, explanation of learned Additional District Judge, that the caveat was attached at the end of the file of the appeal and for that reason it did not come to his notice, is not factually correct. Let, the explanation be put up before the Administrative Judge of Ludhiana Sessions Division, for appropriate order.

In his comments, learned Additional District Judge has mentioned that the appeal be transferred from his Court to some other Court as he does not intend to decide the same. Otherwise also, in view of the facts discussed above, in my considered opinion, it shall be expedient and in the interest of justice that the case is withdrawn from the Court of learned Additional District Judge, Ludhiana and is transferred to some other Court of competent jurisdiction.

Although the applicants had prayed for transfer of the appeal to a Court of competent jurisdiction outside the jurisdiction of Ludhiana, but during the course of arguments, learned counsel for the applicants conceded that he has no objection if the appeal is sent to learned District and Sessions Judge, Ludhiana, for disposal as per law. Accordingly, instead of sending the appeal outside the jurisdiction of Ludhiana, on withdrawal from the Court of Additional District Judge, Ludhiana, it is sent to District and Sessions Judge, Ludhiana, who will dispose of the appeal in accordance with law preferably within a period of four months.

The parties are directed to appear before the District and Sessions Judge, Ludhiana on 24.09.2015 i.e. the date fixed in the appeal.

(SNEH PRASHAR)
JUDGE

01.09.2015.
jitender