

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

**CR No. 1616 of 2014
Date of decision: 04.08.2016**

Ranjit Singh and Another **...Petitioners**

Versus

Gurmail Singh **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Y.S. Turka, Advocate for the petitioners.

Mr. M.S. Chauhan, Advocate for the respondent.

RAJ MOHAN SINGH, J.(ORAL)

Petitioners have assailed order dated 28.01.2014 (Annexure P-8) vide which plaintiff was declared to be a pauper. Plaintiff filed a suit for declaration to the effect that power of attorney dated 17.02.1998 allegedly executed by the plaintiff in favour of defendant No. 1 regarding his share and agreement to sell dated 17.02.1998 allegedly executed by him in favour of defendant No. 1 in respect of his share and receipt dated 17.02.1998 in a sum of ₹ 1,44,000/- allegedly executed in favour of defendant No. 1 and consequently sale deed dated 05.12.2005 allegedly executed by defendant No. 1 in favour of defendant No. 2 in respect of 4 Marlas of land is illegal, null and void.

During the course of proceedings before the trial Court, keeping in view the nature of the suit and relief claimed therein, the trial Court passed an order dated 02.09.2013 asking the plaintiff to

affix ad valorem court fee. The case was adjourned to 18.09.2013 for affixing ad valorem court fee. On the adjourned date also, the needful was not done and case was further adjourned to 25.09.2013.

Faced with the situation on that very date i.e.25.09.2013, an application under Order 33 Rule 1 CPC was filed by the plaintiff seeking grant of permission to continue the suit as an indigent person.

The matter was referred to the Collector for inquiry. The trial Court without waiting for the report of enquiry, accepted the application of the plaintiff vide order dated 28.01.2014 on the premise that summons sent to Collector were received back but since the report could not be secured, therefore, plaintiff has to be declared as pauper.

In my considered view, the order of the trial Court is totally non speaking. If the summons were duly served upon the office of Collector, it was the duty of trial Court to secure necessary report by way of coercive and permissive mechanism under law. In any case, no such decision could have been made without ascertaining factum of holdings available with the plaintiff. A proper procedure has been given for deciding the application under Order 33 Rule 1 CPC. Apparently the trial Court has committed grave error in not adhering to the procedure while passing a totally non speaking order.

In view of aforesaid, the impugned order dated

28.01.2014 is set aside. This case is remanded back to Civil Judge, Derabassi with a direction to decide the application under Order 33, Rule 1 CPC afresh, after obtaining necessary report from the office of Collector and after following proper procedure, as enshrined under Order 33, Rule 1 CPC.

The revision petition stands disposed of.

04.08.2016
Poonam (II)

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No