

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2217 of 2016

Date of Decision.20.05.2016

Smt. Gurdev Kaur alias Debo (deceased) through LRs

.....Petitioner

Vs.

Mehar Singh and others

.....Respondents

Present: Mr. Hamid Hussan, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The revision petition is filed against the order dismissing an application for amendment. On the facts being presented, I was of the view that the suit was an undue exercise undertaken at the instance of the plaintiff when the matter had concluded already upto Supreme Court in respect of the very same property. The case had been initially prosecuted at the instance of the instant plaintiff's father and brothers relating to the estate of one Prem Singh. The contesting defendants in the suit set up a Will said to have been executed by Prem Singh and in the earlier adjudication, the Will was upheld and the claim of Sunder and his sons was dismissed. The matter went upto the Supreme Court and in the case titled Sunder Singh and others Vs. Gurdev Singh and others, the Supreme Court found no merit in the appeal canvassed by them against

the judgment in RSA No.1767 of 1981 and dismissed the appeal on 04.05.1988.

2. The present plaintiff Gurdev Kaur instituted a fresh suit to contend that the Will of Prem Singh propounded by the defendants said to have been executed on 03.02.1973 was fraudulent and valuable evidence which had come about, had not been placed before the Court in earlier proceedings. The plaintiff was trying to place a reliance on a new expert report secured who suggested that signatures found in the said Will were not true.

3. It does not require any great forensic skill to assess that the plaintiff is literally trying to reopen a case that was finally concluded upto the Supreme Court where the Will of Prem Singh said to have been executed on 03.02.1973 had been upheld. The same point was attempted to be reopened at the instance of the plaintiff by the only reason that she was not a party to the previous proceedings. I asked the counsel on the day when the matter came up for hearing before me on 07.04.2016 to explain the tenability of the suit and argue the issue of res judicata. The plaintiff was making a claim as heir to her father Sunder Singh to the estate of Prem Singh. If Sunder Singh himself was the party and in his suit, the Will had been upheld, there is no question of taking the same plea and making reliance on an expert report to contend that the Will was not true. I suspected that the present suit itself was being engineered at the instance of the plaintiff's brothers who were parties in the earlier suit along with their father Sunder Singh. I asked the counsel whether the plaintiff's brothers are present in Court. It turned out that

one of the brothers was present in Court and he got up in Court to acknowledge that he was instructing the counsel. Nothing can be more patent than the reason for the presence of the plaintiff's brother in the Court when he had literally no reason to be present, for the revision petition was with reference to the order passed in an amendment application filed in the suit. When I asked the counsel to explain as to how the decision already rendered in the presence of Sunder Singh would not bind the plaintiff, the counsel would argue that the previous decision must be taken as obtained by fraud and that the Will shall be permitted to be shown as fraudulent. It was the further contention that when Sunder Singh died during the pendency of the appeal only the sons were treated as legal representatives and the plaintiff had not been impleaded. In my view, the non-impleadment of the daughter could make no difference at all since the representation of the brothers who had no adverse interest against the plaintiff were treated as sufficient. If the Sunder Singh himself had lost his claim to the property and the Court had upheld the Will, the plaintiff who claims as heir to the father shall be taken as bound by adjudication made in his presence and after his life time in the presence of his sons who were the brothers of the plaintiff. The suit is clearly barred by law and I invoke the jurisdiction under Article 227 to adjudge the suit as untenable, barred by law and liable for rejection. Since I had put plaintiff's counsel on notice of the fact that the case would require a consideration of not merely the application for amendment but actually on the maintainability of the suit itself, I direct the suit to be taken off from the file as rejected.

3. I asked the counsel as to how he could advise a party to file such a case and why the petitioners shall not be ordered to pay punitive costs for indulging in a vexatious litigation. The plaintiff in the suit has expired and her own sons had been impleaded as parties to prosecute the revision. The counsel explains that they are illiterate persons and they are indigent and they shall not be made to shoulder the costs. If indigency and illiteracy could be a justification, it could hardly be a justification for a counsel who is neither illiterate nor indigent to promote a litigation which on the face of it was vexatious and barred by law. I asked the counsel whether he should not take responsibility for formulating a vexatious litigation and whether he should not be answerable for disciplinary action. The counsel pleaded regret before me and therefore, I let the matter rest there without escalating it to disciplinary action against the counsel or impose exemplary costs for an untenable adventure into a vexatious litigation.

4. The revision petition is dismissed and the suit which was filed in C.S. No.1972 of 2013 titled Gurdev Vs. Mehar is ordered to be rejected.

(K. KANNAN)
JUDGE

May 20, 2016
Pankaj*