

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

**CR No.3015 of 2015
Date of Decision: 07.09.2016**

Krishna Devi

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Manoj K. Tanwar, Advocate
for the petitioner.

Mr. A.S. Yadav, AAG, Haryana.

Mr. J.K Sehrawat, Advocate
for respondents No.4, 6, 7 and 8.

RAJ MOHAN SINGH, J.

[1]. In this revision petition, petitioner has assailed order dated 26.03.2015 passed by Additional Civil Judge (Sr. Division), Meham vide which an application for restoration of the suit was declined.

[2]. Petitioner filed a suit for permanent injunction bearing No.261 of 1999 in the Court of Civil Judge (Jr. Division), Meham seeking to restrain respondents No.1 to 3 from interfering in the

possession of the plaintiff at the instance of Mahadev. Plaintiff asserted that she was in possession of the suit land since the time of her forefather i.e. for the last more than 100 years through her predecessor.

[3]. On 28.11.2000, the suit was ordered to be dismissed as withdrawn in the absence of Advocate of the plaintiff and on the alleged statement of the plaintiff which was made by way of impersonation. Even no permission was granted in the order dated 28.11.2000 for filing the fresh suit. Plaintiff-petitioner on coming to know about the aforesaid fact on 08.02.2010 made an application before the Civil Judge for recalling of order dated 28.11.2000. Plaintiff-petitioner pleaded necessary facts in order to apprise the trial Court regarding the fraud committed upon her as this withdrawal was the handiwork of disgruntled lot. In the grounds of appeal also these facts have been elaborately pleaded.

[4]. In response to the aforesaid application dated 08.02.2010, respondents No. 4 to 8 admitted the claim of the petitioner thereby showing no objection to the application. However, respondents No.1 to 3 contested the application.

[5]. The application was dismissed by Additional Civil Judge (Sr. Division), Meham on 05.02.2011 against which Civil

Revision No.2853 of 2011 was filed in this Court. The said revision petition was decided by this Court on 27.08.2013 by noticing the following facts:-

“.....Some of the admitted facts are to the effect that the case in question was assigned to Sh. Bhupinder Nath, the then Civil Judge (Junior Division), Rohtak. On 28.09.1999, the service of the defendants was completed. Till 20.07.2000, the written statement on behalf of the respondents-defendants could not be filed and the case was adjourned to 28.08.2000, but the case was taken up on 26.08.2000 as the Presiding Officer had to proceed on leave on 28.08.2000 and the case was adjourned to 29.09.2000. On that day, none appeared on behalf of the parties and the notices were ordered to be issued for 28.11.2000. On that date, the said suit was withdrawn.

It is categoric stand of the petitioner-plaintiff that by way of impersonation the suit has been withdrawn. In such circumstances it appears that fraud has been played on the petitioner as also on the Court. Since suit was withdrawn without any liberty to file fresh one, the procedural technicalities are precluding the petitioner-plaintiff from approaching the Court for enforcement of her substantive rights. In

the facts and circumstances of this case, this Court is of the view that since law of procedure is handmaid of justice, procedural technicalities cannot be allowed to stand in way of administration of justice. Interest of justice would be met if the impugned order dated 05.02.2011 is set aside and Court is directed to decide the application afresh taking into consideration entire circumstances. Ordered accordingly.

Parties are directed to appear before the trial Court on the date fixed.

Instant revision petition is disposed of in the above terms.....”

[6]. In view of aforesaid order dated 27.08.2013 passed by this Court, Additional Civil Judge (Sr. Division), Meham took up the issue and again dismissed the application vide order dated 26.03.2015 on the premise that on 28.11.2000 the case was pending for the presence of the parties. Plaintiff herself appeared without her Advocate. Photocopies of ration card and voter card list issued by the Election Commission were sufficient to prove the identity of the plaintiff before the Court. A statement of withdrawal of suit was also recorded by the trial Court which was duly thumb marked by the plaintiff. Zimni sheet of the Court was also thumb marked. In addition to it, the explanation of the plaintiff remained wanting on the aforesaid issues. The

allegation of the plaintiff that her previous counsel obtained her thumb impression on some blank papers and on being asked the Advocate informed her that her appeal is pending in the High Court and would take long time for finalization after admission to regular hearing. On coming to know about the fate of the suit in the year 2009, the application came to be filed.

[7]. I have considered the submissions made by learned counsel for the petitioner as well as learned AAG, Haryana on behalf of respondents No.1 to 3.

[8]. The allegations have been attributed to the previous Advocate who had statedly used the thumb impression of the petitioner. The order dated 28.11.2000 passed by Civil Judge (Jr. Division), Meham was conspicuous by the absence of the learned counsel for the plaintiff particularly when the case was adjourned for the said date. The absence of the Advocate gives rise to strong suspicion and also corroborates the stand of the petitioner to that extent. Surprisingly, after dismissal of the suit as withdrawn, no permission was sought to file fresh suit on same cause of action. The nature of relief in the suit itself was not dependent upon any contingent compromise likely to be effected between the parties, nor the suit was allegedly withdrawn on the basis of any likelihood of compromise or

based on any factual understanding between the parties. The order of withdrawal appears to be unconditional.

[9]. Secondly, the plaintiff was not identified by her Advocate. The sole identification on the basis of photocopies of ration card and identity card issued by the authority cannot be held to be conclusive in the facts and circumstances of the case, more particularly when the plaintiff appears to be rustic lady. The background in which the application for recalling of the order dated 28.11.2000 was moved has some bearing on the merits of the case. It is a cardinal principle of law that no one should be condemned unheard. The case should have been decided on merits. Technicalities should not be allowed to be pitched against a substantial cause of justice. It is also a settled principle that merit of the case cannot be sacrificed on procedural vagaries. This Court in order dated 27.08.2013 passed in Civil Revision No.2853 of 2011 specifically noticed certain incriminating facts which in my considered opinion were sufficient for the trial Court to appreciate the controversy in its right perspective in recalling the order dated 28.11.2000.

[10]. In view of aforesaid, the order dated 26.03.2015 passed by Additional Civil Judge (Sr. Division), Meham is hereby set aside. Order dated 28.11.2000 passed by Civil

Judge (Jr. Division), Meham, dismissing the suit as withdrawn is also set aside. The suit is restored to its original number. Trial Court shall proceed to decide the suit on merits after issuing notices to both the parties.

[11]. Disposed of.

07.09.2016

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No