

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Revision No.3458 of 2016

Date of Decision: 04.10.2016

Mewa Singh and another

.....Petitioners

Vs

Surjit Kaur

.....Respondent

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

Present: Mr. Rakesh Chopra, Advocate  
for the petitioner.

Ms. Avleen Kohli, Advocate  
for the respondent.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioners have assailed order dated 20.02.2016 (Annexure P-1) passed by Civil Judge (Jr. Divn.) Fatehgarh Sahib, whereby application filed by the petitioners for bringing them on record as legal representatives of deceased Mohinder Singh was dismissed.

[2]. Brief facts as gathered from the record are that plaintiff/respondent-Surjit Kaur filed a suit for declaration to the effect that she was joint owner to the extent of 1/4<sup>th</sup> share out of the share of defendant No.3 in the suit property being co-parcener and the sale deed dated 17.02.2010 allegedly executed by defendant No.3 was illegal, without consideration,

without legal necessity, sham transaction, null and void. Permanent injunction was also sought restraining the defendant-petitioners from alienating the suit property. Plaintiff also claimed that the suit property was joint Hindu family, coparcenary and ancestral property of the respondent-plaintiff, defendant-petitioners and said Mohinder Singh deceased. It was pleaded that the respondent being daughter of Mohinder Singh had inherited the property along with sons of Mohinder Singh, who inherited the property from his father Parsin Singh and who in turn inherited the same from his father Bir Singh. In this way, plaintiff claimed 1/4<sup>th</sup> share of her father and also claimed joint possession.

[3]. Petitioners contested the suit and denied that respondent being coparcener. Property was not admitted to be coparcenary and joint Hindu family property of the parties, rather the suit property was claimed to be self-acquired property of defendant No.3 Mohinder Singh in which plaintiff had no share. Defendant No.3 being absolute owner of the property sold the same to the petitioners vide sale deed dated 17.02.2010 and, therefore, petitioners became owners thereof.

[4]. Defendant No.3 also contested the suit on the ground that the property was not ancestral coparcenary property and

joint Hindu family property of the parties, rather the same was self-acquired property and he sold the same vide sale deed dated 17.02.2010. The claim of the plaintiff was denied. Defendant No.3 after filing the written statement on 20.01.2014, executed a Will dated 24.01.2014 in favour of petitioners which was duly registered with the Sub-Registrar.

[5]. Defendant No.3-Mohinder Singh died during pendency of the suit on 21.12.2014. Petitioners moved an application for bringing them on record as legal representatives of Mohinder Singh on the basis of Will dated 24.01.2014. Respondent-plaintiff also filed an application for impleading petitioners and respondent as legal representatives of deceased Mohinder Singh on the basis of natural succession.

[6]. Vide the impugned order, trial Court dismissed both the applications. That is how the present revision petition came to be filed.

[7]. Learned counsel for the petitioners contended that the trial Court could not postpone the issue of bringing legal representatives on record on the basis of Will to a later stage in terms of Order 25 Rule 5 CPC. The determination was *sine qua non* before proceeding with the suit. Learned counsel relied upon **Karamjit Kaur and Anr. vs. Gurbant Singh and ors.,**

2003(3) Civil Court Cases, 88; Mohinder Kaur and another vs. Para Singh and others, AIR 1981 Punjab and Haryana 130(1) to contend that it was obligatory on the part of the trial Court to adjudicate upon the factum of the legal representatives and without such adjudication, the trial Court was not supposed to proceed further.

[8]. On the other hand, learned counsel for the respondent contended that bringing on record the legal representatives would be only for the purpose of conducting the proceeding and the same cannot decide *inter se* disputes between the rival legal representatives as the same has to be decided independently. It would be proper to bring on record all the legal representatives on record so that all the legal representatives vouch safe the estate of the deceased and ultimate benefit of the real legal representatives. Such a course would also avoid delay in disposal of the suit.

[9]. Learned counsel for the respondent relied upon the observations made by this Court in Charanjit Singh and anr. vs. Bharatinder Singh and ors., 1987(1) PLR 403, wherein Mohinder Kaur and another's case (supra) was relied and it was held that the proper course would be to bring all the legal representatives on record so as to vouch safe the interest of the

property of the deceased for the ultimate benefit of real legal representatives.

[10]. Learned counsel for the respondent also relied upon **Suresh Kumar Bansal vs. Krishna Bansal and another, (2010) 2 Supreme Court Cases 162**, wherein it was held that provisions in terms of Order 22 Rule 5 CPC is only for the purpose of bringing legal representatives for conducting of those legal proceedings only. Such a course does not operate as *res judicata*, nor *inter se* disputes between the rival legal representatives would be settled by doing so. The *inter se* disputes between the legal representatives has to be independently tried and decided in appropriate proceedings. It was held that proper course would be to bring on record all the legal heirs/representatives of the deceased including the legal representatives, who claimed themselves to be owners on the basis of Will, so that all the legal representatives can represent the estate of deceased for the ultimate benefit of the real legal representatives. Such a course would avoid delay in disposal of the suit.

[11]. The observations made in para 20 of the the aforecited case are to the following effect:-

“20. *It is now well settled that determination of the*

*question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefitted.”*

[12]. In view of aforesaid, it has to be noticed that all the legal representatives of deceased Mohinder Singh, who claimed themselves to be legal representatives on the basis of their individual status or any instrument were required to be brought on record and the trial found that all the legal representatives of deceased were already on record as plaintiff and defendants. Therefore, the applications filed by both the parties were dismissed.

[13]. In view of legal position as mentioned above, I do not subscribe the arguments raised by learned counsel for the petitioners. This revision petition is accordingly dismissed.

October 04, 2016

Atik

**(RAJ MOHAN SINGH)**  
**JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No