

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 416 of 2015
Date of decision : March 28, 2016

Kulwant Singh

..... Petitioner

Versus

Jaswinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G. S. Sirphikhi, Advocate
for the petitioner.

Mr. Prateek Gupta, Advocate
for respondent No.2.

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?

Amit Rawal, J (oral).

The petitioner-defendant No. 1 is aggrieved of the order dated 10.12.2014 (Annexure P-9) whereby application seeking transposition as legal heir of plaintiff No.1 has been declined.

Learned counsel appearing on behalf of the petitioner submits that claim in the suit is for declaration to the effect that plaintiffs are co-sharers/co-owners in possession to the extent of $\frac{1}{2}$ share i.e. $\frac{1}{6}^{\text{th}}$ share each while defendant Nos. 1 to 3 are co-sharers/co-owners to the extent of $\frac{1}{2}$ share i.e. $\frac{1}{6}^{\text{th}}$ share in the property mentioned in the schedule given with consequential relief of permanent injunction restraining the defendants from interfering in the exclusive possession over the property. During the pendency of

the suit, Surjit Kaur died. An application for bringing on record her legal representatives was filed in which Kulwant Singh-petitioner also figured and there no clash in interest with the co-defendants, much less with the plaintiffs, therefore the application for transposition was filed to transpose defendant No.1-petitioner as legal heir of the plaintiff and he would be bound by the averments made in the suit, stated to be filed on behalf of the plaintiffs. These facts have not been noticed by the court below while dismissing the application.

Learned counsel appearing on behalf of defendant -respondent No.2 submits that it is an belated act as the application for bringing on record the legal representatives was allowed on 21.5.2014 which was further modified vide order dated 11.8.2014. There are already averments in the plaint viz-a-viz petitioner having been granted respective share by transposition and he may not wriggle out of the aforementioned averments.

I have heard learned counsel for the parties, appraised the paper book and of the view that the impugned order is not sustainable, for the reason that on going through the written statement Annexure P-3 it is revealed that name of Surjit Kaur-plaintiff No.1, much less of plaintiff Nos. 2 and 3 also figure and they have also been impleaded as legal representatives.

In view of the aforementioned observations, I am of the view that no prejudice would be caused to the defendants, in case the petitioner is allowed to be transposed as legal heir of plaintiff No.1 and he shall be bound by the averments made in the plaint viz-a-viz share having been accrued to him or not.

Since I am allowing the transposition of petitioner-defendant No.1 as legal heir of plaintiff No.1, I deem it appropriate to grant two effective opportunities to lead evidence in accordance with law to the petitioner and defendants shall be permitted to rebut the same.

The issue with regard to plaintiff No.3 being the adopted son of Surjit Kaur is left open.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

March 28, 2016
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