

In the High Court of Punjab and Haryana at Chandigarh

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CR No. 4124 of 2014

Date of Decision: 16.05.2016.

Jaibir and others

---Petitioners

versus

Jagdish and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Anil Rathee, Advocate
for the petitioners

Mr. R S Malik, Advocate
for respondent No. 2

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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Rekha Mittal, J.

The present petition has been directed against the order dated 23.05.2014 (Annexure P11) passed by the Civil Judge (Junior Division) Sonapat dismissing the application for restoration of Civil Suit No. 169/2012 to its original number and stage.

Counsel for the petitioners would contend that Jaibir and others filed a suit for declaration with consequential relief of injunction on the premise that the suit land is ancestral qua defendant No. 1 - Jagdish, inherited by him from his ancestors and, therefore, Jaibir and Amit son of Jagdish-plaintiff Nos. 1 and 2 have birth right in suit property and Smt. Rajpati wife of Jagdish-plaintiff No. 3 has equal right in the ancestral property.

Counsel has submitted that in the said case, Jaibir petitioner No. 1 engaged Shri Anand Pal Antil, Advocate and executed a vakaltnama/power of attorney in his favour dated 27.04.2012. Petitioner Nos. 2 and 3 engaged Shri Ajay Tyagi and Shri Bijender Singh Antil, Advocate and fled power of attorney in their favour dated 16.04.2012. Shri Ajay Tyagi, Advocate made a statement dated 20.07.2012 that “he does not want to pursue the suit and withdraws the same and accordingly the same may be dismissed”. On the basis of said statement, the suit was dismissed as withdrawn vide order dated 20.07.2012 passed by the trial Court. It is argued with vehemence that as Shri Ajay Tyagi, Advocate was never engaged by Jaibir-petitioner No. 1, statement made by said counsel withdrawing the suit cannot be binding upon him, therefore, the Court below has committed a gross error rather illegality in dismissing the application for restoration of the suit, dismissed vide order dated 20.07.2012.

Counsel for the contesting respondent (defendant No. 2) has submitted that the application for restoration filed by Jaibir and dismissed by the trial Court is nothing but an abuse and misuse of process of law in order to cause harassment to the contesting respondent. The petitioners Jaibir and others, Jagdish respondent No. 1 members of the same family have joined hands to cause loss to the respondent. It is further submitted that plaint of the suit was signed by the plaintiffs namely Jaibir, Amit sons of Jagdish and Smt. Rajpati wife of Jagdish and the same bears the signatures of Shri Ajay Tyagi,

Advocate, sufficient to belie plea of Jaibir that he did not engage Shri Ajay Tyagi, Advocate on his behalf. It is further submitted that technicalities cannot be allowed to stand in the way of substantial justice and keeping in view conduct of the petitioners, they are not entitled to indulgence of this Court.

I have heard counsel for the parties, perused the paper book and certified copies of various documents made available during course of hearing.

Be that as it may, perusal of the documents would make it evident that Jaibir petitioner No. 1 gave a vakalatnama/power of attorney in favour of Shri Anand Pal Antil, Advocate. There is nothing on record suggestive of the fact that Jaibir ever engaged Shri Ajay Tyagi, Advocate when on the contrary power of attorney in favour of Shri Ajay Tyagi, Advocate has been thumb marked by Amit and Smt. Rajpati, meaning thereby that plaintiff No. 1 - Jaibir engaged Shri Anand Pal Antil, Advocate and plaintiff Nos. 2 and 3 engaged Shri Ajay Tyagi and Bijender Singh Antil, Advocates. The mere fact that the plaint signed by all the three plaintiffs also bears the signatures of Shri Ajay Tyagi, Advocate engaged only by plaintiff Nos. 2 and 3 is not sufficient to accept submissions of the respondent that Shri Ajay Tyagi, Advocate was competent to make any statement on behalf of petitioner No. 1 or withdraw the suit on his behalf. Under these circumstances, I find merit in the contentions of the petitioners that the suit filed on behalf of Jaibir could not be withdrawn by Shri Ajay

Tyagi, Advocate, though the statement made by Shri Ajay Tyagi, Advocate on behalf of petitioners No. 2 and 3 shall be binding against them. Since Shri Ajay Tyagi, Advocate could not withdraw the suit on behalf of petitioner No. 1 - Jaibir, the learned trial Court committed a gross error rather illegality in dismissing the application for restoration of the suit on behalf of petitioner No. 1.

In view of what has been discussed hereinabove, the petition is partly allowed, suit (civil case No.169/12) filed by Jaibir and others is ordered to be restored only qua petitioner No. 1. The trial Court shall proceed with the suit in accordance with law.

(Rekha Mittal)
Judge

16.05.2016
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