

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4970 of 2014(O&M)
Date of Decision:18.1.2016

Gajraj Singh and others

---Petitioners

vs.

Savitri Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashok Aggarwal, Senior Advocate
with Mr. Alok Jain, Advocate
for the petitioners

Ms. Alka Sarin, Advocate
for respondent No. 4

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?

Rekha Mittal, J.

The present petition lays challenge to order dated 5.7.2014 passed by the Civil Judge, Gurgaon allowing the application of the respondents for depositing the amount as per order dated 11.3.2014 passed by this Court.

Notice of motion order, passed on July 31, 2014 reads as follows:-

“Counsel for the petitioners referring to order of 11.3.2014 of

this Court claims that the appellants-plaintiffs had been allowed to deposit the 4/5th amount (which was withdrawn from the trial court) within a period of one month from the date of passing of the order. It is, interalia, urged that vide impugned order of 5.7.2014, said order of this Court has been varied by the lower court and that too without issuance of any notice to the opposite parties causing great prejudice to the petitioners and their predecessors-in -interest. It is claimed that the impugned order was passed at their back.

Notice of motion returnable by 1.9.2014.

Notice re: stay as well.

Notice regarding CM Nos.15052 and 15053 also.”

It is an undisputed position of the case that this Court while disposing of RSA No. 526 of 1988 titled “Savitri Devi and another vs. Gajraj Singh and others” decided on 11.3.2014 answered the substantial question in favour of the plaintiffs/appellants holding them entitled to pre-empt the sale being a co-sharer but in the concluding part, the appellants were permitted to deposit the 4/5th amount within a period of one month. A relevant extract from the aforesaid judgment reads as follows:-

“In view of the aforesaid discussion, the question involved in this appeal is answered in favour of the plaintiffs/appellants and it is held that the plaintiffs have right to pre-empt the sale being a co-sharer. Accordingly, the judgment and decree of the Appellate Court is set aside and that of the trial Court is restored.

Before parting, it would be quite necessary to mention that vide order dated 31.8.1988, this Court had allowed the plaintiff to withdraw 4/5th of the amount deposited by them in the trial Court with permission to deposit it again within a month of decision of this Court.

In view of the said order dated 31.8.1988, the plaintiffs/appellants are allowed to deposit the 4/5th amount which was withdrawn from the trial Court within a period of one month from the date of passing of this order.”

The sole grievance of the petitioners is that the Civil Judge, Gurgaon allowed the respondents to deposit 4/5th amount beyond the period of one month fixed by this Court and that too without notice to the petitioners, therefore, the impugned order cannot be allowed to sustain.

Counsel for the respondents has urged that the respondents filed an application before the Civil Judge (trial court) seeking permission to deposit the amount and the trial court has granted permission, in accordance with law.

I have heard counsel for the parties and perused the records.

Counsel for the respondents is not in a position to justify the order passed by the trial court which clearly amounts to varying the order passed by this Court while disposing of RSA No. 526 of 1988. This apart, the permission for extension of time to deposit the amount could not be granted without providing an opportunity of hearing to the petitioners who had been contesting claim of the respondents in regard to their right to pre-empt the sale being a co-sharer. In this view of the matter, I am of the

considered opinion that the court below committed a serious error rather illegality in allowing the respondents to deposit the amount disregarding the direction issued by this Court in regard to the period within which the respondents were directed to deposit 4/5th of the amount.

For the foregoing reasons, the petition is allowed, the impugned order is set aside. However, the respondents would be at liberty to take recourse to the remedy, if any, in accordance with law.

(Rekha Mittal)
Judge

18.1.2016
paramjit