

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

CR No. 6048 of 2015 (O&M)

Date of Decision: February 29, 2016

Darab Singh

...Petitioner

Versus

Gurjot Singh and another

...Respondents

ORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Naresh Kaushal, Advocate,
for the petitioner.

K. KANNAN, J. (Oral)

1. The revision petition is against the order allowing for prosecution of the suit as indigent persons filed by the plaintiffs against their grand father. The suit is for maintenance against the grand father on a plea that their father had expired and their mother has re-married after the death of their father. They are entitled to about 8 kanals of land, but having regard to the minority of the plaintiffs, the defendant himself had been receiving the rent. It appears that one of the plaintiffs has got compassionate appointment as a peon on contractual basis earning ₹6,000/- per month.

2. The grand father, who is respondent before the court below and the petitioner before this court, denied that he was receiving rent in relation to the agricultural land and contended that the plaintiffs have enough resources to pay the court fee by the holding of land to the extent of 8 kanal. The employment of one of them surely supply the necessary means to pay the court fee.

3. The Court, while considering the issue of whether the plaintiffs were indigent or not, considered that the provision of Order 33 of the Civil Procedure Code requires to “sufficient means” and mere possession of property could not be taken as constituting the means. The court was particularly taking note of the assertion made by the plaintiffs that they were not receiving the rent and that it was being received by their grand father himself. The Court applied the correct test for means and if it was convinced that the plaintiffs could not realize any money through the ownership of 8 kanal of land and also took note of the fact that ₹6,000/- per month as a salary by a Peon cannot leave the plaintiffs with adequate money for the court fee that is necessary for claim of maintenance, it was justified in allowing the plaintiffs to prosecute the appeal as indigent persons. The Court Fees Act requires that for the purpose of court fee for a claim for maintenance to be valued at ten times the amount claimed to be payable for one year. Consequently, if they were claiming maintenance at ₹20,000/- per month, which comes to ₹2,40,000/- per year and as per Section 7 of the Court Fees Act, the ten time of the said value comes to ₹24 lakhs. The court fee would far exceed the means available with the plaintiffs. The Court was justified in allowing for the prosecution of the suit as indigent persons.

4. The order is maintained and the revision is dismissed.

February 29, 2016
prem

(K.KANNAN)
JUDGE