

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Civil Revision No.7639-2016

Date of decision: December 01, 2016

Mahinder Singh

...Petitioner

Versus

Smt. Maya Devi (now deceased) through
her LRs Bhagwan Dass etc. & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Satya Vir Singh Yadav, Advocate for the petitioner.

Rajan Gupta, J.

Present revision is directed against the order dated 03.08.2016 (Annexure P-3), passed by the trial court, whereby applications filed by the petitioner/defendant No.2 (Annexures P-1 & P-2) have been dismissed and he has been burdened with Rs.10,000/- as costs.

Learned counsel for the petitioner has assailed the order. He has submitted that the court below has committed a grave error while dismissing the two applications filed by the petitioner, one for taking on record affidavit in the form of evidence with documents Ex.P-1 to P-11 and another for producing Dr. Mahinder Singh in evidence of defendant No.2/petitioner and the aforesaid evidence was quite necessary for proper adjudication of the case.

I have heard learned counsel for the petitioner and given

careful thought to the facts of the case.

It appears, that petitioner and respondents are real brothers. There is a dispute of ownership of House No.1513/26, Manohar Nagar, Gurgaon. Respondents Bhagwan Dass and Rajinder Kumar got filed a civil suit for possession of the house in question through their mother Maya Devi to vacate the same from respondent No.3. Maya Devi expired on 14.04.2003. An application was filed by Bhagwan Dass and Rajinder Kumar for impleading them as her legal representatives on the basis of a Will dated 30.9.2002. Simultaneously, another application to implead as legal heir of Maya Devi was also filed by Mahender Singh petitioner/defendant No.2 on the basis of Will dated 20.01.2003. Both the applications were allowed by the trial court vide order dated 12.11.2003, whereby Bhagwan Dass and Rajender were allowed to pursue the suit as plaintiffs and Mahender Singh was allowed to join litigation as defendant No.2 alongwith other brother Chandu Lal. Thereafter, certain applications were filed by the parties, which were disposed of by the trial court and the process of disposing of such applications took a long time. On 7.11.2015, when case was fixed for consideration, defendant No.2/petitioner moved an application for placing on record affidavit alongwith some documents. Said application was opposed by the plaintiff as defence of petitioner/defendant No.2 had already been struck off. On 20.7.2016, petitioner/defendant No.2 moved another application for affording him opportunity to lead evidence. Both these applications have been dismissed by the trial court, vide impugned order dated 3.8.2016 on the ground that defence of defendant No.2 had

already struck off as he had failed to file amended written statement after amended plaint filed by the plaintiffs. I find no legal infirmity with the order. Suit was filed on 21.12.2002. Certain applications were moved by the parties and the trial court had to dispose of the same. A perusal of order dated 31.01.2008 shows that defence of defendant No.2/petitioner was struck off by the trial court. Thereafter, instead of challenging the order by way of revision, he filed application for review of order dated 31.01.2008, which was dismissed by the trial court on 25.04.2008. Even then defendant No.2/petitioner did not prefer any revision petition, but filed instant applications, which have been dismissed by the trial court. He has also been burdened with Rs.10,000/- as costs. I find no ground to interfere in revisional jurisdiction. The revision petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

December 01, 2016
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No