

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

CR No.7936 of 2013  
Date of decision : 11.07.2016

DV Institute of Dharma

...Petitioner

Versus

Khushpal Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

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

Present: Mr. Sapan Dhir, Advocate for the petitioner.

Mr. Prateek Mahajan, Advocate for respondent No.1.

Mr. Amarjit Markan, Advocate for respondent No.2.

Mr. Punit Malik, Advocate for  
Mr. R.C. Sharma, Advocate for respondent No.4.

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**AMIT RAWAL, J. (Oral)**

The petitioner is aggrieved of the impugned order, whereby application for substitution of legal representatives of Late Kuldeepak Singh Dhillon, has been declined, whereas the wife and the children alleged to have been disowned have been permitted to prosecute the suit.

Mr. Sapan Dhir, learned counsel appearing on behalf of petitioner relies upon the definition of Section 2(11) of the Code of Civil

Procedure which define legal representative to contend that since petitioner interest is derived from trust deed (Annexure P-2) dated 19.01.2006 and, therefore, the Trust would be proper and necessary party to espouse the cause of the deceased-plaintiff in a suit seeking declaration that the alleged gift deed and mutation sanctioned in favour of Jagdish Kaur was null and void. In support of his contention, he has relies upon judgment rendered by Hon'ble Supreme Court in *Suresh Kumar Bansal Vs. Krishna Bansal and anothers 2010(2) SCC 162* and as well as judgment of this Court in *Surjit Kaur and others Vs. Balwinder Kaur and others, 2010 (4) PLR 685* to submit that at the best the Court could have held the enquiry as envisaged under Rule 5 Order 22 of the Code of Civil Procedure.

Mr. Prateek Mahajan and Mr. Amarjit Markan, learned counsel appearing on behalf of defendants submits that Courts below while declining the relief sought by the petitioner has given the liberty to set up the claim in independent suit but not in the manner and mode as has been sought. In support of his contention, relied upon Full Bench judgment rendered by this Hon'ble Court in *Mohinder Kaur and another Vs. Para Singh and others, AIR 1981 (Punjab) 130*. It has further been contended that even if the arguments of Mr. Dhir is accepted and the trial Court is directed to hold enquiry as per Rule 5 Order 22 then the said finding would not be read and treated as res judicata. In other words, parties would not be precluded from setting up the independent claim, thus, it would be totally farcical exercise in directing the trial Court to hold the enquiry as sought for and thus urges this Court for upholding of the order under challenge.

I have heard learned counsel for the parties and appraised the

paper book and of the view that the reasoning given by the trial Court is liable to be upheld, for, in case the trial Court is directed to hold the enquiry under Rule 5 Order 22, it would be unnecessary delay for the adjudication of the suit and yet to be determined as to whether the petitioner has derived interest out of the trust deed or not. It would be in the fitness of thing if petitioner chooses so to set up independent claim. Ratio decidendi culled out in Suresh Kumar Bansal and Surjit Kaur's case (Supra) deals with the proposition that where third party set up a right by way of will of the testator in case it is not the case where petitioner has derived interest from trust deed which is yet to be proved. Thus, the petitioner cannot be permitted to take the benefit of provision of Sub-Section (11) of Section 2 of the Code of Civil Procedure. It has been brought to the notice of this Court that LRs have cross-examined the defendants and suit is almost at the final stage.

Without commenting upon the merits and demerits of the claim of the petitioner, I am of the view that petitioner shall be entitled to set up the claim allegedly deriving out of the trust deed in independent suit but not in the manner and mode as has been adopted.

No ground for interference is made out.

Dismissed.

**11.07.2016**

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**(AMIT RAWAL)  
JUDGE**