

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

**CR No.2558 of 2012(O&M)
Date of Decision-17.08.2017**

Pritpal Singh ... Petitioner

Versus

Atamjit Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. G.C. Dhuriwala, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the orders dated 10.05.2011 and 27.02.2012 passed by Civil Judge (Sr. Division), Chandigarh and for maintaining the order dated 24.12.2010 passed by Civil Judge (Junior Division), Chandigarh, vide which application under Order 1 Rule 10 CPC was dismissed.

[2]. Plaintiff/petitioner filed a civil suit against his brother Atamjit Singh in respect of House No.2075, Sector 15-C, Chandigarh. In the aforesaid suit, respondent No.3 filed an application under Order 1 Rule 10 CPC for impleading himself in place of Atamjit Singh (defendant) on the ground that the house in question was transferred in the name of Atamjit Singh on the basis of Will dated 20.02.1996 executed by Gurdial Kaur. The said

transfer took place on 17.09.1998. Atamjit Singh entered into an agreement to sell with G.C. Garg and Santosh Garg on 01.04.1999 and no target date for execution of sale deed was fixed. On 06.08.1999, Atamjit Singh executed a registered Will in favour of respondent No.3 Gaurav Garg son of aforesaid G.C. Garg in respect of house in question. On 13.05.1999, plaintiff petitioner challenged the Will of Gurdial Kaur in favour of Atamjit Singh through Civil Suit No.91 of 1999 i.e. 13.05.1999. Atamjit Singh died on 27.08.1999 and no sale deed could be executed pursuant to the agreement to sell dated 01.04.1999. On the aforesaid premise, an application under Order 1 Rule 10 CPC came to be filed at the instance of respondent No.3.

[3]. Civil Judge (Junior Division), Chandigarh vide order dated 24.12.2010 dismissed the application primarily on the ground that applicant/respondent No.3 did not place on record any alleged Will in his favour. He merely placed on record photocopy of judgment dated 11.08.2009 passed by Civil Judge (Sr. Division), Chandigarh. In the absence of any such document, the application was dismissed on the ground that the defendant cannot be added as a party against the wishes of the plaintiff who is a *dominus litis*. The dispute as to the Will is between the plaintiff and Atamjit Singh or his LRs. The applicant cannot be allowed to become a party in the suit.

[4]. Thereafter, another application was filed by the applicant with the pleadings that Atamjit Singh executed a registered Will in favour of applicant/respondent No.3. Thereafter, applicant applied for transfer of the suit property on the basis of registered Will in the Estate Office, U.T. Chandigarh. The same was challenged by Smt. Surinder Kaur widow of Atamjit Singh vide Civil Suit No.2 dated 11.02.2002.

[5]. The suit filed by Smt. Surinder Kaur, her son and daughter challenging the Will of the applicant to be forged and fabricated on the basis of their inheritance being legal heirs of Atamjit Singh was dismissed by Civil Judge (Sr. Division), Chandigarh vide judgment and decree dated 11.06.2009. It was also alleged in the application that plaintiff-Pritpal Singh was one of the defendant in the said suit and he filed written statement to the effect that he had performed last rites of Atamjit Singh in the year 1999. He further claimed that he was residing with Amarjit Singh in the suit property. Applicant/respondent No.3 on the basis of stand taken by Pritpal Singh in the written statement and on the basis of proceedings of Civil Suit No.2 dated 11.02.2002 asserted that Pritpal Singh mislead the Court regarding service of summons on Atamjit Singh from the very inception and got the service of legal heirs of Atamjit Singh by way of publication. The claim of Smt. Surinder Kaur, her son and daughter was rejected by the Civil Court vide

judgment and decree dated 11.06.2009 to which no appeal was filed and the said judgment had already attained finality.

[6]. The application filed by the applicant was contested by the plaintiff claiming the Will in favour of the applicant to be forged and fabricated. The transfer on the basis of Will was also claimed to be illegal.

[7]. Trial Court on the basis of registered Will in favour of the applicant and in view of copy of judgment dated 11.06.2009 passed by Civil Judge (Sr. Division), Chandigarh in Civil Suit No.2 dated 11.02.2002 found that a *prima facie* case was existing in favour of the applicant for his impleadment as party defendant in the suit and allowed the application under Order 1 Rule 10 CPC vide order dated 10.05.2011.

[8]. Thereafter, applications were filed for recalling the order dated 24.12.2010, for removal of the name of the counsel from the order showing his presence at the time of arguments dated 24.12.2010 and for modification of the order dated 10.05.2011. All the aforesaid applications being of same nature were disposed of by the trial Court vide single order. Earlier counsel for the plaintiff i.e. Mr. Ashish Sharma suffered a separate statement in the Court that he has no objection if the order dismissing the application under Order 1 Rule 10 CPC is recalled. He further made a statement that he has no objection if the name of counsel i.e. Mr. Pawan Kumar is removed from the presence memo of the order dated 24.12.2010.

The same counsel for the plaintiff argued the application on 10.05.2011, but he never raised such question or objection while advancing the arguments before the trial Court when the application under Order 1 Rule 10 CPC was allowed on merits. He never made any such objection that the applicant had no *locus standi* to argue the matter again and again when earlier application had already been dismissed.

[9]. Having raised no objection at the time of passing of the order dated 10.05.2011, it was taken to be an admission and no objection on behalf of the plaintiff for deciding the application under Order 1 Rule 10 CPC again on merits. On the basis of registered Will in favour of the applicant, it was found that the applicant is a necessary and proper party to the suit as deceased defendant Atamjit Singh had already executed a Will in his favour. Validity of Will was the subject matter of the suit filed by the plaintiff. The order dated 24.12.2010 in which the application under Order 1 Rule 10 CPC was dismissed was recalled to the aforesaid extent and the name of the counsel was removed. Order dated 10.05.2011 was modified to the extent of removal of the name of Mr. Pawan Kumar, Advocate from the array of memo of presence.

[10]. The trial Court while passing the order dated 27.02.2012 has endorsed that the order dated 10.05.2011 was a lawful order which was passed on the separate statement suffered by the counsel in the Court, showing no objection if the order dated

24.12.2010 dismissing the application under Order 1 Rule 10 CPC is recalled. On showing no objection for recalling the order dated 24.12.2010, the trial Court proceeded to pass the order dated 10.05.2011 and the application for impleadment was allowed on merits. The plaintiff never objected that the applicant had no *locus standi* to argue the matter again when the same application was disposed of earlier. Having waived such right, trial Court came to the conclusion that the order dated 10.05.2011 was a lawful order and the impleadment of applicant/respondent No.3 on the basis of registered Will in his favour was justified.

[11]. In view of aforesaid attending facts and circumstances of the case, I see no justification in setting aside the orders dated 10.05.2011 and 27.02.2012 passed by the trial Court. The order dated 24.12.2010 was recalled on the basis of independent statement made by learned counsel for the plaintiff, showing no objection to such a recalling. Second application was supplemented by material and the counsel appearing on behalf of the plaintiff never objected that the second application was not maintainable. No such objection was taken, rather statement was made for acceptance of the application under Order 1 Rule 10 CPC. No such application was moved by the plaintiff before the concerned Court that the concession given by the counsel was erroneous and was on account of misconception of fact.

[12]. In view of above, I do not see any error of jurisdiction in the orders dated 10.05.2011 and 27.02.2012 passed by the trial Court. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

17.08.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No