

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2716 of 2017(O&M)
Date of decision : 30.5.2017

Karminder Singh

...Petitioner

Vs.

Dharam Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Arun Jain, Sr.Advocate with
Mr.Amit Jain, Advocate for the petitioner.

Mr.Sapan Dhir, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 7.4.2017 (Annexure P-5) whereby his application for transposing himself as plaintiff was dismissed by the learned trial Court, defendant No.2 has approached this Court by way of the present civil revision petition filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued. In the meantime, learned trial Court was directed not to pass the final order.

Heard learned counsel for the parties.

Bare perusal of the plaint Annexure P-1 filed by respondent No.1-plaintiff will leave no manner of doubt about the respective shares of

the parties in the amount in question. Plaintiff has got 1/4th share whereas

the defendant No.2-petitioner has got 1/2th share. Defendants No.3 and 4 were having 1/8th share each. It is also not in dispute that during the pendency of the suit, defendants No.3 and 4 suffered statement in favour of the plaintiff to the effect that they have got no objection in case the amount of 1/4th share is released in favour of the plaintiff. This statement suffered by defendants No.3 and 4 prompted the petitioner-defendant No.2 for moving the application under Order 1 Rule 10 read with Section 151 CPC seeking transposition as plaintiff so that the learned trial Court may render an effective judgment without there being any confusion or ambiguity between the parties. However, the learned trial court failed to appreciate this material aspect of the matter while passing impugned order which has caused grave injustice to the petitioner and the same cannot be sustained.

It would be the substance and not the form of application which will be relevant. Even if the petitioner had moved an application under Order 23 Rule 1-A CPC instead of moving the application under Order 1 Rule 10 read with Section 151 CPC, it would not take away the jurisdiction of the trial Court for passing the appropriate order on the application. Further, plaintiff-respondent No.1 was not likely to suffer any prejudice in case the petitioner-defendant No.2 would have been transposed as co-plaintiff.

On the other hand, it would facilitate the trial Court to arrive at a judicious conclusion with a view to do substantial justice to the parties and also to avoid multiplicity of litigation. However, since the trial Court could not appreciate the factual as well as legal aspect of the matter before passing the impugned order, the same cannot be sustained for this reason

as well.

It is settled proposition of law that the Courts must make an endeavour to grant reasonable opportunity to both the parties to put up their best case before the Court. Rules of Procedures are meant for advancing cause of justice. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted by the learned Court. While following the abovesaid principle of law, the learned Court shall achieve twin objects namely, (i) it would avoid multiplicity of litigation between the parties and (ii) the learned Court shall be in a better position to do substantial justice between the parties. Since in the present case the trial Court did not follow the above principle of law while passing the impugned order, it cannot be sustained for this reason also.

Learned counsel for respondent No.1-original plaintiff has stated that plaintiff has no objection in case the present petitioner is transposed as co-plaintiff and the amount of his share is also released. Learned Senior counsel for the petitioner has also fairly stated that the petitioner would have no objection in case the amount of the share of respondent No.1(original plaintiff) is ordered to be released by the trial Court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that since the impugned order dated 7.4.2017 Annexure P-5 has been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, impugned order dated 7.4.2017 (Annexure P-5) is hereby set aside. The petitioner would be transposed as co-plaintiff with respondent No.1 – original plaintiff. However, since the

suit is pending for quite sometime, the trial Court is directed to make an endeavour to decide the suit as early as possible, however, in accordance with law.

Resultantly, with the abovesaid observations made, present revision petition stands allowed, however, with no order as to costs.

(Rameshwar Singh Malik)
Judge

30.5.2017
Meenu

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