

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

RA-CR-193-CII of 2017 (O&M)
In CR No.6461 of 2017
Date of decision : 27.11.2017

Jabarjang Singh

...Applicant/Petitioner

Versus

Rajinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Punj, Advocate for the applicants/petitioners.

ANIL KSHETARPAL, J. (ORAL)

CM No.23742-CII of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 7 days in filing the review application is condoned.

Application is allowed.

Main Case

The petitioner has filed this application for reviewing the order dated 21.09.2017 dismissing the revision petition filed by the petitioner against the order passed by the trial Court permitting the plaintiffs to withdraw the suit with a permission to file a fresh one on the same cause of action.

The plaintiffs-respondents had filed a suit claiming declaration

with respect to a house and a decree for permanent injunction restraining the defendants from interfering into the possession of the plaintiffs.

The plaintiffs had also pleaded that Mohinder Singh, predecessor-in-interest of the parties had also left behind a registered Will dated 30.05.2008 executed in favour of the plaintiff, defendant No.1 and plaintiff No.3.

In the written statement, the defendants denied the existence of any Will dated 30.05.2008.

During the pendency of the suit, the plaintiffs filed an application seeking amendment of the plaint to claim the rights in the property left by Mohinder Singh, their predecessor-in-interest, on the basis of the Will dated 30.05.2008. However, the aforesaid application was dismissed. It is admitted before me that the learned trial Court did not even frame a issue on the Will dated 30.05.2008.

Faced with these circumstances, the plaintiffs filed an application under Order 23 Rule 1 CPC. The aforesaid application was allowed and the plaintiffs were permitted to withdraw the suit with a permission to file a fresh one on the same cause of action.

The petitioner challenged the aforesaid order in the revision petition which was ordered to be dismissed by detailed order dated 21.09.2017.

Learned counsel for the review petitioner has vehemently argued that this Court while noticing the facts have noticed wrongly that defendant No.1 has not challenged the Will dated 30.05.2008.

No doubt, defendant No.1 in the written statement had pleaded

that the Will dated 30.05.2008 is forged and fabricated document, however, that would not improve the case of the petitioner. Here is a case where both the parties are successors-in-interest of Mohinder Singh who is alleged to have executed a Will dated 30.05.2008 bequeathing certain property in favour of plaintiff No.1, different property in favour of plaintiff No.3 and different property in favour of defendant No.1. However, the plaintiffs while filing the suit did not inadvertently claim any relief on the basis of the Will although it was pleaded in the plaint.

The plaintiffs even made an attempt to amend the plaint and sought the benefit under the registered Will dated 30.05.2008. However, the learned trial Court refused to amend the plaint.

In these circumstances, the plaintiffs filed an application for permission to amend the plaint.

Taking into consideration that in the plaint, the plaintiffs had failed to seek relief as per the registered Will-testamentary document and, therefore, the plaintiffs sought permission of the Court to withdraw the suit with a permission to file a fresh one, this Court does not find any reason to review the order dated 21.09.2017.

Taking into consideration the aforesaid facts, this Court does not find any good ground to review/recall the order dated 21.09.2017.

Review application is dismissed.

27.11.2017

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**