

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

CR No.3319 of 2016(O&M)

Date of Decision: 05.09.2018

Surat Singh

..... Petitioner

Versus

Kamlesh and others

.....Respondents

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

Present:Mr. C.P. Tiwana, Advocate
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 25.03.2016 passed by Additional Civil Judge (Senior Division), Kaithal vide which application to withdraw the permission to title the suit as indigent person under Order 33 Rule 9 CPC was declined.

[2]. The application was filed by the defendant/petitioner on the ground that plaintiffs were declared to be indigent persons by the predecessor Court. During pendency of the suit, Churia Ram father-in-law of plaintiff No.1 and grand-father of plaintiffs No.2 and 3 died on 04.08.2015. Plaintiffs are the only legal heirs and successors of aforesaid Churia Ram and would inherit the

agriculture land, therefore they ceased to be indigent persons during pendency of the suit.

[3]. The application was contested by the plaintiffs.

[4]. Trial Court disposed of the application on the premise that the suit was filed for recovery of damages against the defendant. Issues have already been framed and both the parties have already led their evidence. At the stage of rebuttal evidence and arguments, the application in question came to be filed. Defendant has placed on record *jamabandi* for the year 2010-11 and death certificate of Churia Ram. Death of Churia Ram is not in dispute. It is also not disputed that Churia Ram died *intestate*. Succession cannot remain in abeyance. Plaintiffs would inherit the property of Churia Ram according to their shares. The application was disposed of at that stage with an observation that in case, trial Court finds that the plaintiffs had inherited the property from Churia Ram, then a contingent decree can be passed after deciding the issue of Court fee on merits.

[5]. In my considered opinion, the course adopted by the trial Court cannot be held to be illegal inasmuch as that issue of Court fee is always between the Court and the plaintiff. The duty of the defendant is only to set the machinery in motion. It is a settled principle of law that in case at the time of decision of the

suit on merits, the suit is found to be deficient in terms of Court fee, a contingent decree can be passed, requiring the plaintiffs to make good the deficiency in Court fee, failing which the suit shall be dismissed. In the instant case, the issue of inheritance of Churia Ram has to be appreciated by the trial Court as per shares of the plaintiffs. In case, plaintiffs are found to have inherited the property of Churia Ram for the purpose of affixing the requisite Court fee, the same shall be done by the trial court by issuing notice to the plaintiffs to make good the deficiency in Court fee before a decree is passed on merits.

[6]. Considering the controversy involved, at this stage, I deem it appropriate to endorse the impugned order passed by the trial Court. No interference is required in the present revision petition. Since the case is at the stage of rebuttal evidence and arguments, therefore, trial Court is directed to decide the suit in accordance with law.

September 05, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No