

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.383 of 2018 (O&M)

Date of Decision: 22.01.2018

Balinder & others

....Appellant (s)

Versus

Santosh & others

...Respondent(s)

Civil Revision No.389 of 2018 (O&M)

Balinder & others

....Appellant (s)

Versus

Darshni Devi & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Randeep S. Dhull, Advocate
for the petitioners.

HARI PAL VERMA, J. (Oral)

This order shall dispose of two revision petitions i.e. Civil Revision Nos.383 and 389 of 2018 as a similar issue is involved in both the petitions. However, for brevity, facts have been noticed from Civil Revision No.383 of 2018.

Petitioners have filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 02.12.2017 passed by learned Additional Civil Judge (Sr. Division),

Kaithal, whereby the application moved by the respondent-plaintiffs to sue the defendant-petitioners, as indigent persons, was allowed.

Briefly stated, respondent-plaintiffs have filed a suit seeking compensation, as damages, on account of death of Fakir Chand. Fakir Chand was the husband of Santosh-plaintiff/respondent no.1, whereas Naresh, Ritu and Vijay are the minor children of deceased Fakir Chand. Plaintiff-respondent no.5 is the mother of deceased Fakir Chand. In their application filed under Order 33 Rules 1 and 2 CPC, the plaintiff-respondents have claimed that they are indigent persons and do not possess sufficient means to pay the Court fee. Learned Civil Judge (Sr. Division), Kaithal while allowing the aforesaid application, granted permission to the respondent-plaintiffs to pursue the suit in question, as indigent persons.

Learned counsel for the petitioners has argued that Chela Ram, father-in-law of Santosh, respondent no.1, and husband of Dhanpati, respondent no.5, though has expired but they owned land measuring 23 kanals and 19 marlas, which has now been inherited by the respondent-plaintiffs and thus, they are financially well off and possess sufficient means to file the suit after paying the Court fee. Therefore, the application filed by the plaintiff-respondents under Order 33 Rule 1 and 2 CPC has wrongly been allowed. He has further argued that the trial Court while deciding the application filed under Order 33 Rule 1 and 2 CPC, can either allow or reject the same and cannot defer the payment of Court fee, as observed in the order dated 02.12.2017 itself.

I have heard learned counsel for the petitioners and perused the impugned order.

Provisions of Order 33 Rule 1 CPC, whereby a suit can be instituted by an indigent person, reads as under:-

“1. Suits may be instituted by indigent person.- Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation I: A person is an indigent person,-

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject matter of the suit.

Explanation III: Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III: Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.”

In the case in hand, the respondent-plaintiffs are claiming to be indigent persons. On a careful perusal of order dated 02.12.2017 passed by the Court below, this Court finds that the petitioner-defendants had raised an objection against the declaration of respondent-plaintiffs as indigent persons, as they had purchased two kanals of land, owned three bufaloes and two tubewells were also installed in their land. Respondent-plaintiffs Dhanpati and Santosh were also receiving old age/widow

pension. Interestingly, though the petitioners-defendants had raised an objection that the respondents-plaintiffs are not entitled to pursue the suit, as indigent persons, but they have failed to bring on record the fact as to how much old-age pension/widow pension is being drawn by the respondent-plaintiffs. Even otherwise, the old age/widow pension is not enough to pay the Court fee and element of indigence does not disappear solely on this ground.

Therefore, this Court finds that there is no illegality in the impugned orders dated 02.12.2017 passed by Additional Civil Judge (Sr. Division), Kaithal.

Accordingly, the present petitions are dismissed.

Since these revision petitions have been dismissed on merits, no further order is required to be passed in the applications filed under Chapter 1 Part-C, Rule 2 of the High Court Rules and Orders, Vol.-5 read with Section 151 CPC to bring on record the LRs of deceased Chela Ram, respondent no.6.

January 22, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No