

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

C.R. No.5721 of 2016
Date of Decision.26.02.2018

Satjit Singh

.....Petitioner

Vs

Narinderjit Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sham Lal Bhalla, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

C.M. No.2239-CII of 2018

For the reasons stated in the application, order passed by this Court on 25.01.2018 is recalled and the revision petition is restored to its original number.

Application is allowed.

C.R. No.5721 of 2016

The revision petition is directed against the order dated 12.07.2016 whereby the application for producing on record the decree dated 22.01.1988 passed in the suit titled as “Shivdev Singh Vs. Manjit Kaur” has been dismissed.

This court had issued notice of motion on 05.09.2016. As per the office report, respondent has been served but there is no representation. The revision petition was dismissed in default on 25.01.2018 but the same has been restored now. Since there is no representation for the respondent, I hasten to dispose of the revision petition after perusing the records and with the assistance of the counsel for the petitioner.

Mr. Bhalla, learned counsel appearing on behalf of the

petitioner submits that the suit aforementioned was filed for handing over possession against the defendant i.e. brother of the plaintiff, branding him to be licensee but the fact of the matter is that defendant had denied his status as licensee and ownership of the plaintiff. Manjit Kaur i.e. mother of the plaintiff, during her life time executed a Will dated 15.03.1998 in favour of the plaintiff. Despite that defendant denied the ownership of the plaintiff in the property. It is in that backdrop of the matter, the judgment and decree dated 22.1.1998 was sought to be placed on record by way of additional evidence as the suit property had been partitioned and the share in possession of the respondent had fallen to the share of the plaintiff, therefore, the suit has been filed for recovery of use and occupation charges and interest accrued thereupon regarding the portion occupied by the defendant as a licensee. No doubt, the application did not contain the expression that “despite exercise of due diligence” the aforementioned judgment and decree could not be placed on record but it would enable and help the trial Court in proper adjudication of the *lis*. This fact has totally been ignored by the trial Court, thus, there is illegality and capriciousness.

I have heard learned counsel for the petitioner and appraised the paper book. The suit was filed in 2013 and the application aforementioned was moved at the stage when both the parties had concluded their evidence. The trial Court vide order dated 28.04.2015 had resorted to the provisions under Order 14 Rule 5 CPC in framing the additional issue qua validity of the Will dated 15.03.1998 executed by Manjit Kaur in favour of the plaintiff whereas the application for additional evidence was submitted on 05.05.2016. The application is not properly worded as the specific pleading expressing no knowledge of the judgment

and decree sought to be placed on record had not been made but the fact of the matter is that the trial Court ought to have looked into the nature of the suit claiming use and occupation charges from the defendant on the basis of having acquired ownership of the property by virtue of aforementioned decree. In my view, in order to prevent miscarriage of justice and to advance justice, the Court below ought to have allowed the application subject to terms and conditions which it could have imposed but not in the manner and mode as indicated above.

Resultantly, the order under challenge is set aside and the application for placing on record the judgment and decree dated 22.01.1998 by way of additional evidence is allowed subject to payment of costs of ₹5000/- to the respondent, which shall be condition precedent, failing which the impugned order shall stand restored.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

February 26, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No