

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

CR-7251-2015 (O&M)

Date of decision : 15.2.2018

Sandhya and another

..... Petitioners

Versus

Sumittri and ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Varun Goyal, Advocate for the petitioners.

Mr. D.K.Bhatti, Advocate for respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 9.9.2015 (Annexure P-4) passed by learned Civil Judge (Senior Division), Jalandhar vide which an application filed by the present petitioners namely Sandhya widow of Sudarshan Kumar and Gurleen Kaur minor daughter of Sandhya widow of Sudarshan Kumar under Order I Rule 10 of the Code of Civil Procedure, 1908 was dismissed.

The controversy in the present case is that Sumittri Devi widow of Sudarshan Kumar along with her two daughters namely Marin and Sushma Rani, (respondents No. 1 to 3 herein) have filed a suit for possession by way of for specific performance of the agreement dated 16.6.2011, which was allegedly executed by Gurdial Singh-defendant in favour of Sudarshan Kumar late husband of plaintiff No. 1-Sumittri and father of plaintiffs No. 2 and 3 namely Marin and Sushma Rani.

In the alternate recovery of Rs. 18.00 lacs was also sought along with permanent injunction against defendant-Gurdial Singh. The Suit was filed on 19.8.2013. Sandhya and Gurleen Kaur-present petitioners filed an application claiming that Sudarshan Kumar had married Sandhya-present petitioner on 24.2.1988 by telling her that he has divorced Sumittri. Gurleen Kaur is the daughter of Sudarshan Kumar and that since the agreement was in favour of Sudarshan Kumar, petitioners being the legal heirs of Sudarshan Kumar are necessary parties. Petitioners also claim that they are residing in the disputed property.

In the reply, plaintiffs-respondents did not deny that applicants-present petitioners are living in the disputed property but it is stated that they are living as tenants.

I have heard learned counsel for the parties and has carefully perused the case file.

It comes out that plaintiffs in the present suit are resident of Bharmingam in United Kindom and they have filed the suit through special power of attorney. Deceased-Sudarshan Kumar was living at Urban Estate Phase-II, Jalandhar.

Learned trial Court has observed that question whether the applicants-petitioners being Class-I heirs are the only legal heirs of Sudarshan Kumar cannot be decided in the present suit and they cannot be transposed as plaintiffs.

At the stage of arguments, learned counsel for respondents-plaintiffs has stated that he has no objection if Gurleen Kaur is added as

defendant to support the case of the plaintiffs, subject to the condition that she will have to prove her claim being Class-I heir in separate proceedings and only if she succeeds in her claim, she will be entitled to benefit of the decree which may be passed in the present case. However, objection has been raised regarding Sandhya, wife of Sudarshan Kumar being made party on the ground that no divorce decree is available on file and that the marriage of Sudarshan Kumar with Sumittri is admitted and in the absence of any divorce, Sandhya will not get any status.

Learned counsel for the petitioners has produced on file the photocopy of the birth certificate of Gurleen Kaur daughter of Sudarshan Kumar showing that she was born on 18.4.2002 and her birth was registered on 22.4.2002. The certificate was issued on 10.8.2002. It is claimed that even if the lawful marriage of Sandhya with Sudarshan is not proved even then Gurleen Kaur being the daughter of Sudarshan will be treated as Class-I heir and will succeed to his estate.

At this stage, it is not deemed proper to comment upon the controversy regarding relationship of the present applicants-petitioners with Sudarshan Kumar, which is to be decided in the separate proceedings.

This Court is to look into the prima facie documents available on file whether there are sufficient grounds to implead the applicants-petitioners as parties or not. So far as Sandhya is concerned there is no document placed on file showing that Sudarshan Kuamr has divorced Sumittri before his marriage with Sandhya. Therefore, against the wishes of plaintiffs, she cannot be added even as defendant. Consequently, she is left

to establish her claim by way of separate suit regarding her relationship with Sudarshan Kumar and consequently claim benefit of decree which may be passed in the present suit in favour of plaintiffs.

Regarding Gurleen Kaur, the opposite party has no objection if she is added as proforma defendant with permission to allow her to support the case of the plaintiffs subject to the condition that she will have to establish her relationship with Sudarshan Kumar independently in separate proceedings and also claim the benefit of the decree which may be passed in favour of the plaintiffs.

It being so, revision petition is partly allowed. Application qua petitioner No.1-Sandhya widow of Sudarshan Kumar is dismissed and the application qua petitioner No.2-Gurleen Kaur daughter of Sudarshan Kumar is allowed to be added as proforma defendant with the permission to file written statement and lead evidence to support the case of the plaintiffs regarding the agreement in question. However, it is further directed that both the applicants-petitioners-Sandhya and Gurleen Kaur will have to establish their rights independently as legal heirs of Sudarshan Kumar and also claim the relief of benefit of decree which may be passed in this case, in separate proceedings.

Consequently, decree if any passed, in the present case, it will be subject to the outcome of the separate proceedings that may be initiated by the present applicants-petitioners.

(KULDIP SINGH)
JUDGE

15.2.2018

preeti

Whether speaking / reasoned

Yes

Whether Reportable:

No