

In the High Court of Punjab and Haryana at Chandigarh

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**CR No.7959 of 2017 (O&M)
Date of decision: 7.12.2018**

JAGTAR SINGH

.....petitioner

Versus

SANGAT SINGH & OTHERS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Vivek Thakur, Advocate,
for the petitioner.

Mr.M.S.Athwal, Advocate
for the respondents

RAJ MOHAN SINGH, J.(oral)

Notice of motion was issued on 14.11.2017 by
passing the following order:-

“Learned counsel for the petitioner
contends that civil suit titled Sangat Singh vs
Gurmukh Singh and others was filed in the year
2001. Gurmukh Singh died on 14.08.2005. An
application was filed by Sangat Singh for bringing on
record the legal representatives of deceased-

Gurmukh Singh and the said application was dismissed under Order 9 Rule 2 CPC, but still suit was decreed exparte on 15.10.2009 against deceased Gurmukh Singh. The petitioner was in Bahrain and he got the appeal filed on 26.08.2014 through his attorney. The lower Appellate Court has dismissed the application under Section 5 of the Limitation Act and the appeal has also been dismissed.

Learned counsel further contends that though in view of amended provision, it was the duty of the legal representatives themselves to come on record, but once the application was filed by the plaintiff-Sangat Singh and the dismissal of the application under Order 9 Rule 2 CPC would have entailed in dismissal of the suit qua those legal representatives who could not be impleaded by the plaintiff Sangat Singh.

Notice of motion for 20.03.2018”

Thereafter, during the course of arguments on 26.9.2018, learned counsel for the petitioner was directed to apprise this Court about the status of appeal filed by Avtar Singh on the adjourned date.

It appears from the record that LR's of defendant No.1 Gurmukh Singh were sought to be brought on record by the plaintiff himself. The said application was dismissed in default. An application for restoration of the said application was filed by one of the LR's of defendant No.1 Gurmukh Singh and the same was allowed on the basis of no objection shown by the plaintiff. Thereafter, the suit was revived qua the LR's of defendant No.1 Gurmukh Singh. Trial Court proceeded to decree the suit. An appeal was filed by Avtar Singh before the lower Appellate Court. The said appeal was against the final decree. Brother of Avtar Singh, namely, Jagtar Singh was in Bahrain at the relevant time. As per ground No.9 of the appeal filed by Jagtar Singh, following proceedings were made in respect of acquiring knowledge about the pending litigation :-

“That the appellant came to know about the judgment and decree passed in lower Court in the month of July 2014 when attorney of appellant received summon from the court of Sh.Jaspal Verma, ADJ, Hoshiarpur in an appeal titled as Avtar Singh vs. Sangat Singh etc. The attorney immediately filed application for obtaining the certified copy of the judgment under appeal on 22.7.2014 which was supplied on 30.7.2014. Hence counting the days

from the date of knowledge, the appeal is within time. A separate application u/s 5 of the Limitation Act is being filed with the appeal.”

Evidently, Jagtar Singh acquired knowledge regarding filing of appeal by Avtar Singh against the final decree in the month of July 2014. Still the petitioner did not prefer any appeal against the final decree, rather filed an application for obtaining certified copy of preliminary decree and thereafter appeal was filed along with an application under Section 5 of the Limitation Act. Dismissal of the application along with appeal on the ground of limitation has prompted the petitioner to file this revision petition by concealing the factum of pending appeal filed by his brother Avtar Singh before the lower Appellate Court.

In pith and substance, the scope of present revision petition is only in respect of the delay which has occurred in filing the appeal against the preliminary decree before the lower Appellate Court despite the fact that after drawing of final decree, brother of the petitioner had already filed an appeal in which petitioner was served in the month of July 2014. No appeal was filed by the petitioner against the final decree.

Faced with this situation, learned counsel for the petitioner wishes to withdraw this revision petition.

Though there is no obvious ground to allow him to

withdraw this revision petition, but in the interest of justice, this revision petition is allowed to be withdrawn leaving the petitioner to avail his legal remedies in accordance with law.

Dismissed as withdrawn.

December 07, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No