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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-CR-25-CII-2015 (O&M) IN
CR-236-2012
Date of decision : 18.01.2018

Amarjit Singh (deceased through LRs)

... Appellant(s)

Versus

Sukhminder Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.L. Gupta, Advocate
for the review applicant/respondent(s).

Mr. R.K. Saini, Advocate and
Mr. Jaivir Yadav, Advocate
for the non-applicant/petitioner.

AMIT RAWAL, J. (ORAL)

This Court vide order dated 19.12.2014 disposed of revision petition bearing CR No.236 of 2012 preferred against the order dated 01.02.2010 and 16.02.2010 in the following manner:-

"The said Board of Doctors consisted of Professor and Head of Surgery, Assistant Professor of Forensic Medicine and a Neurologist. There is absolutely no reason why the said report of the medical experts brought in evidence before the lower court, should have been ignored. Even otherwise, provisions of Order XXXII CPC were to be followed in letter and spirit but were given a go-bye. If some earlier court, without appreciation of facts and the application of law, has made some observation many years ago regarding soundness of

mind of the petitioner, the same would not act as res judicata. It is also not understandable as to how and in what circumstances the lower court gave its own finding that “the plaintiff seems to be a person of unsound mind” without even examining the plaintiff in the witness box.

Keeping in view the totality of facts and circumstances, impugned order dated 1.2.2010 is no order in the eyes of law and is sequelly set aside. The case is sent back to the lower court for deciding the application of Gurmit Singh for acting as next friend of Amarjit Singh and for filing the suit on his behalf afresh considering the medical report and if found necessary for personal satisfaction even by examining the plaintiff in person.

So far as order dated 16.2.2010 is concerned, it also suffers from inherent infirmity and illegality. Once vide order dated 1.2.2010, application of next friend of the plaintiff to sue on his behalf, he being of unsound mind/lunatic, had been dismissed in terms of Order XXXII Rule 15 CPC, an opportunity was to be given to plaintiff Amarjit Singh to come forward to file the suit on his behalf or by himself and also then he was expected to sign the plaint and was also required to furnish affidavit, if any, in support of averments made by him in the plaint. Without providing any such opportunity to plaintiff Amarjit Singh, how he could have signed the plaint or could have engaged his counsel who could have then signed, only after his engagement in the suit by the plaintiff. Thus order dated 16.2.2010 also suffers from major legal and functional defect and thus is set aside even otherwise when order dated 1.2.2010 has been set aside, as a sequel thereto, subsequent order of 16.2.2010 cannot stand independently and thus even otherwise legally is to go.

As a sequel to the discussion as made above, the matter is

remanded to the lower court for deciding the application of Amrjit Singh to sue Sukhminder Kaur etc. as a person of unsound mind/lunatic through his next friend.

The parties are directed to appear before the trial court on 13.1.2015.

The petition stands disposed of accordingly.”

The review applicant/respondent(s) has preferred the present review application by annexing the certain documents on the premise that the issue with regard to unsound mind/lunatic of Amarjit Singh had already been settled in various proceedings, much less, the application under Order 32 Rule 15 CPC, at the last stage of the suit, was not maintainable, thus, there was an error apparent on record. The reference is also made to the various judgments annexed with the review application.

This Court vide order dated 09.10.2015 had issued the notice and directing the trial Court not to pass the final order.

Mr. R.K. Saini, learned counsel appearing on behalf of the non-applicant/petitioner submits that there was no error apparent on record. The order passed by this Court is most innocuous. The matter was relegated to the trial Court to decide the application under Order 32 Rule 15 CPC afresh. All the points, which has been raised in the revision petition, can be agitated before the trial Court, thus, urges this Court for dismissal of the review application.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Gupta, for, on reading of the contents of paragraph No.8 of the application, whereby the issues framed in the suit have not been controverted by Mr. Saini, the issue No.1 takes care of the apprehension of

the plaintiff with regard to the unsoundness of mind. The documents (Annexures A-1 & A-2), on record, reveals that issue with regard to unsoundness of mind of Amarjit Singh had already been decided holding that the plaintiff is not of unsound mind. Be that as it may, I am of the view that the aforementioned facts ought to have been examined by the Courts below, but the fact of the matter is that the subsequent order dated 16.02.2010 rejecting the plaint was not a correct appreciation of law. There was no need for the petitioner to move an application under Order 32 Rule 15 CPC, which has been rejected vide order dated 01.02.2010. Resultantly, the order dated 19.12.2014 passed by this Court remitting the matter to the trial Court to decide the application moved under Order 32 Rule 15 CPC afresh, in my view, is an exercise of futility, particularly when the issue had been framed, therefore, the aforementioned finding of this Court, in my view, was an error apparent and therefore, the order, under review, is hereby recalled. The trial Court is directed to decide the the suit in accordance with the preponderance of the evidence and law.

Review application stands disposed of.

18.01.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No