

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

-:-

Date of decision: 07.03.2018

**1. RA-CR-172-CII of 2017 in
C.R. No. 2416 of 2002**

Chittano Devi & Ors.

... Petitioners

Vs.

Gurnam Singh & Ors.

... Respondents

2. C.R. No. 933 of 2003 (O&M)

Chittano Devi & Ors.

... Petitioners

Vs.

Surinder Singh & Ors.

... Respondents

3. C.R. No. 1199 of 2002 (O&M)

Karam Singh

... Petitioner

Vs.

Ram Rattan & Ors.

... Respondents

4. C.R. No. 5622 of 2001 (O&M)

Chitanno Devi & Ors.

... Petitioners

Vs.

Ram Rattan & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.L. Batta, Sr. Advocate,
Mr. Ashok Kumar Khubbar, Advocate, for the petitioners.

Mr. R.A Sheoran, Advocate.

Mr. Adarsh Jain, Advocate,

for respondent Nos. 1 to 3 and 6
(in C.R. Nos. 1199 of 2002 and 5622 of 2001)
for respondent Nos. 2 to 4 and 7 in (C.R. No. 933 of 2003)

AMIT RAWAL, J. (Oral)

C.M No. 21406 – CII of 2017

In view of submissions made by counsel for the parties, delay of 1685 days in refiling the review application is condoned.

C.M stands disposed of.

C.M No. 21405 – CII of 2017

In view of averments made in the application delay of 23 days in filing the review application is condoned.

C.M stands disposed of.

RA-CR-172-CII of 2017

Present application has been preferred for review of order dated 19.10.2012.

For the reasons stated in the application, the same is allowed. Order dated 19.10.2012 dismissing the C.R No.2416 of 2002 is recalled and revision petition is restored to its original number and status. C.R. No. 2416 of 2002 is taken on board itself.

Main Cases:-

This order of mine shall dispose of above-mentioned petitions.

All the revision petitions have been filed against the order dated 23.04.2001 passed by Additional District Judge, Jagadhari, wherein it has been held that the compromise would not affect the decision of pending regular second appeals. It would be in the fitness of things to give the pre

face of the factual matters involved in the present revision petition.

A civil suit bearing No. 295 of 1987 instituted on 16.1.1987 was filed by Baru Ram and Surta Ram sons of Chhoto Ram and Sunderi against the defendants 14 in numbers claiming declaration with respect to the possession on the premises that that one Neoli widow of Jasmat who was owner of the agricultural land i.e. suit land inherited by her on account of death of her husband. Jasmat and Neoli who were issueless. Sundri was the sister of Jasmat and the plaintiffs being sons of Sundri and Chhoto Ram, nearest heirs, were entitled to inherit the aforementioned land, but a cause of action arose to file the suit, for, defendants No. 1 to 3 had propounded a Will dated 13.4.1976 alleged to have been executed by Neoli in their favour. In other words, the challenge was laid to the aforementioned Will by claiming the aforementioned declaration.

The suit was contested by defendants No. 1 to 3, 6 and defendants No. 7 to 12 by opposing the Will whereas defendants No. 4 and 5 admitted the claim of the plaintiffs. It was submitted that Neoli had executed a Will in her full conscious without any coercion, pressure and force. The aforementioned suit was decreed by the trial Court vide judgment and decree dated 13.5.1997. Mutation in favour of defendants No. 1 to 3 was held to be illegal and not binding upon the plaintiffs and the plaintiffs were also held entitled to claim the possession. The aforementioned decree was assailed by Ram Rattan-defendant no. 1; Pawan Kumar-defendant No. 2; Memo Devi, defendant No. 3 vide Civil Appeal No. 16 of 1997, another appeal filed by Gurnam Singh, defendant No.4 and Rameshwar, defendant No.5 bearing Civil Appeal No. 101 of 1997 and Civil Appeal No.18 of 1997

filed by defendants No. 14 Surinder Singh. During the pendency of the aforementioned appeals, a compromise dated 15.1.2001 was entered into between defendant No.1 to 3 with the plaintiffs. The lower Appellate Court vide judgment dated 23.4.2001 disposed of the appeal filed by defendants No. 1 to 3 in terms of the compromise and other three appeals were rendered infructuous. In a sense, all the three appeals were also disposed of. While disposing of the aforementioned appeals, it was noticed that prior to the filing of the suit aforementioned Baru Ram had filed another civil suit No. 89 of 1988 against Ram Rattan and others claiming declaration. The same was dismissed vide judgment and decree dated 23.12.1988 and the appeal laid before lower Appellate Court also met with the same fate. It is in that regard, RSA No. 1683 of 1994 is pending adjudication before the Court and against the very same suit one Gurnam Singh, who was respondent and defendant No. 4 without being an appellant, before the lower Appellate Court has also preferred a regular second appeal bearing No. 1544 of 1994 and same is pending adjudication.

Mr. Roshan Lal Batta, Senior Counsel assisted by Mr. Ashok Kumar Khubbar, appearing on behalf of the petitioners i.e., the daughters of Baru Ram son of Chhoto Ram and Sundri submitted that Karam Singh, the brother moved an application before the lower Appellate Court dated 13.2.2001 accompanied by affidavit, which was verified for granting the permission to contest the appeal on merits in view of the fact that fraud had been played upon the applicants/respondents, for, an amount of consideration i.e. Rs.28,50,000/- was to be paid to him and his sisters but was not paid. The Court took the cognizance of the said application on

7.3.2001 however on 30.3.2001, Karam Singh suffered a statement and withdrew the aforementioned application. The petitioners were under impression that their application was still pending and came to know only later on that the application moved by the brother was withdrawn. Against such one C.R No.1199 of 2002 is also pending adjudication. The petitioners were illiterate and did not know the intricacy of law and have been duped. The Court below ought to have recorded the statement or had issued notice to all the other affected parties who entered into a compromise.

As far as review application in CR-2416-2002 is concerned it was suggested that there is an error apparent on record as the counsel was prevented from sufficient cause in not appearing before the court resulting into dismissal of the revision petition in default by commenting upon the fact that the parties had arrived at compromise.

Mr. Adarsh Jain, learned counsel appearing on behalf of defendants No. 1 to 3 & 6 and the appellants before the lower Appellate Court submitted that the civil revisions are not maintainable in view of the Order 23 Rule 3-A of the Code of Civil Procedure, 1908 and the remedy was to move before the same very Court. Except brother nobody has come forward for recalling of the order. The affected parties have not even initiated any criminal proceedings for breach of the compromise. In fact, independent remedy lies to seek the implementation of the compromise against the brother in case their brother had not apportioned the amount, though alleged to have received the same.

In rebuttal Mr. Batta, learned Senior Counsel has referred to a judgment of the Hon'ble Supreme Court in **R. Rathinaval Chettiar and Anr.**

versus V. Sivaraman and others 1999 (4) SCC 89 to contend that the suit at the appellate stage cannot be permitted to be withdrawn as valuable rights had accrued in favour of the affected parties. An emphasis is laid to the findings ruled out in paragraphs 22 and 23.

I have heard learned counsel for the parties and perused the paper book and of the view that there is no force and merits in revision particularly in the civil revision No. 1199 of 2002, wherein no explanation has come forward on behalf of Karam Singh for withdrawing the application at the instance of the counsel particularly when the application for recalling of the compromise and for hearing the appeal on merits had separately suffered a statement. No element of pressure and coercion surfaced during the pendency or during the time when he suffered statement. For the sake of brevity the statement dated 30.3.2001, suffered by Karam Singh and his advocate Gurnam Singh on 16.4.2001 read as under: -

“ Statement of Karam Singh S/o Baru Ram age 42 years labourer r/o village Makhore Teh Jagadhri on oath.

It is stated that I withdraw the application that I filed in the Court on 07.03.2001. I accept the compromise which I entered with Ram Rattan etc. The appeal of Ram Rattan be accepted and my suit be dismissed. I withdraw the suit. The case be consigned to record room.

RO&AC

30.03.2001

Sd/- Karam Singh

Statement of Sh. Gurnam Singh Advocate Counsel for respondents 1(i) to 1(ix) & respondent No.2.

It is stated that in view of the compromise Ex.Cx & statement of the respondents I do not want to pursue the case hence I withdraw the suit titled Baru Vs. Ram Rattan. The suit

be dismissed & the appeal of Ram Rattan, Pawan Kumar & Memo Devi be accepted. Rest of the appeals Gurnam Vs. Baru and Surender Vs. Baru be dismissed.

RO&AC

16.04.2001

Sd/- Gurnam Singh Advocate.”

As regards the other petitions preferred by the petitioners who were the respondents in the appeal and plaintiffs in the trial Court, The revision against the order of the learned Additional District Judge is not maintainable in view of the provisions of Order 23 Rule 3(A) they were required to move an independent application in the manner and mode as adopted by Karam Singh.

Faced with this situation, Mr. Batta, learned Senior Counsel assisted by Mr. Ashok Kumar Khubbar, seeks the liberty of this Court for withdrawal of the civil revision with liberty to move and appropriate application before the competent court for recalling of the order and hearing the appeal on merits. In view of the statement of Mr. Batta learned Senior Counsel assisted by Mr. Ashok Kumar Khubbar , I need not delve on the adjudication of the revision petitions. The petitions are permitted to be withdrawn with liberty aforementioned in accordance with law. The period spent herein shall automatically deemed to have been condoned in view of the provision of Section 14 of Limitation Act otherwise which the other party would have a right to file the objection qua maintainability.

Accordingly, C.R No. 1199 of 2002 is dismissed and C.R Nos. 2416 of 2002, 933 of 2003 and 5622 of 2001 are dismissed as withdrawn.

**RA-CR-172-CII of 2017 in
C.R. No. 2416 of 2002 (O&M)**

-8-

March 07, 2018
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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No