

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

Civil Revision No.1576 of 2014 (O&M)

Date of Decision: February 26, 2019

Harjit Singh & another

...Petitioners

Versus

Tejinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Manoj Pundir, Advocate,
for the petitioner.

Mr. G.C.Shahpuri, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present revision petition, at the instance of the petitioner-defendants, is directed against the impugned order dated 23.12.2013, whereby application Annexure P-7 preferred by the respondent-plaintiffs for withdrawal of the suit claiming partition of the suit property without giving reasons as to how it was suffering from inherent defect, has been allowed.

Mr. Manoj Pundir, learned counsel representing the petitioner-defendants submitted that respondent-plaintiffs Tejinder Singh alias Happy and Navneet Kaur filed a suit for separate possession by way of partition of 1/3rd share out of the residential house bearing No.516, Ranjit Gali, behind Santpura Gurudwara, Model Town, Yamuna Nagar by metes and bounds by averring that they are grand children of Kartar Singh as their father Manjit Singh was son of Kartar Singh. Manjit Singh stated to have been assassinated in 1984 Sikh riots, whereas their mother Manjit Kaur had

entered into a Kareva marriage with one Bahadur Singh. In such circumstances, they had 1/3rd share being the surviving son and daughter of late Manjit Singh as Harjinder Kaur and Mohinder Kaur were sisters of Manjit Singh.

Defendants in the written statement opposed the suit and denied the plaintiffs to be son and daughter of Manjit Singh. It was asserted that Manjit Singh had separated from the family after the marriage and was living at Delhi and after his death, his widow obtained all the benefits which were given under the scheme promulgated by the Government. It was next contended that during the pendency of the suit, respondent-plaintiffs sought the amendment of the suit by incorporating that the property at the hands of father Manjit Singh or Kartar Singh was ancestral in nature. The aforementioned application for amendment was dismissed by the trial Court and the matter reached in this Court vide Civil Revision No.6762 of 2013 and this Court vide order dated 11.11.2013 upheld the order of the trial Court by dismissing the revision petition. Immediately one month thereafter, the respondent-plaintiffs submitted an application dated 20.12.2013 (Annexure P-7) for withdrawal of the suit by averring as under:-

“That the plaintiffs had moved an application for amendment of the plaint and had sought permission to amend the plaint to the effect that the grand father of the plaintiffs late Shri Kartar Singh was the karta of the Joint Hindu family and that the house in dispute had been thrown by him in the Joint Hindu family pool, so the house in dispute was the joint Hindu family property of late Shri Kartar Singh and his three sons and grand sons. This amendment was not allowed by this Id.court, against which the plaintiffs had gone in revision before the Hon'ble High Court of Punjab and Haryana at Chandigarh but said revision no.6762 of 2013 has been dismissed by the

Hon'ble High Court on the ground that amendment cannot be allowed because it was already in the knowledge of the plaintiffs.

That as such there is formal defect in the suit for which the suit is not likely to succeed. As such the plaintiffs want to withdraw the present suit and request this ld.court that permission to withdraw the suit with liberty to file afresh on the same cause of action, may kindly be granted, in the interest of justice.”

Learned counsel for the petitioners further submitted that the ingredients of Order 23 Rule 3 CPC were not referred to and even the alleged inherent defect was also not explained. The trial Court, without assigning any reasons despite the fact that the application was opposed, vide impugned order allowed the same, though the aforementioned order has been stayed by this Court. In the meantime, the respondents filed a suit which is pending adjudication. It is an attempt to overcome the order declining the amendment and as well as the objections as plaintiffs are not the co-owners, therefore, had no locus standi to claim partition.

Mr. G.C.Shahpuri, learned counsel appearing on behalf of the respondent-plaintiffs supported the impugned order by submitting that all the possible objections can be raised in a pending suit Annexure P8/A, wherein all the reliefs, as required to be incorporated, have been referred to. In fact, all the properties were not included in the previous suit and the suit was liable to be dismissed on account of partial partition. It was not an attempt to overcome the order of the High Court as the order, whereby the application for amendment was declined by the trial court, was upheld.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner-defendants.

It would be in the fitness of things to extract Para 3 of the previous plaint and Para 3 of the present plaint. The same read thus:-

“Para 3 of the present plaint.

That the house in dispute bearing no.516 was the property of Shri Kartar Singh who was karta of the Joint Hindu Family consisting of himself and his three sons Manjeet Singh, Harjit Singh and Rajinder Singh. The house in dispute had been thrown by late Shri Kartar Singh, the then Karta of the Joint Hindu Family into the Joint Hindu Family pool and therefore, the house in dispute was the Joint Hindu Family⁷ property of late Shri Kartar Singh and his three sons and grand sons. This house was always treated by Shri Kartar Singh and his sons as Joint Hindu family property. Shri Kartar Singh was the Karta and his three sons Manjit Singh, Harjit Singh and Rajinder Singh were the coparceners. After the death of late Shri Manjit Singh, the plaintiffs have inherited his 1/3 share because late Shri Kartar Singh and his wife Smt.Amrit Kaur died intestate. They did not execute any Will, nor they were competent to execute any Will.

Para 3 of the previous suit

That the plaintiffs' father Shri Manjit Singh had been assassinated in the 1984 Sikh riots. The plaintiffs are the surviving children of late Shri Manjit Singh. Plaintiffs' mother Smt.Manjit Kaur had entered into `Kareva marriage on 28.6.1989 with Shri Bahadur Singh son of S.Dewan Singh of Khan Ahmedpur, PO Alipur, Distt.Ambala because she had contracted kareva marriage, therefore, she is not being made a party in the present suit.”

On comparison of the averments in the application and in Para 3 of the subsequent plaint, it is an apparent attempt to circumvent the orders of the trial court and as well as the High Court, whereby the amendment asserting the nature of the property to be ancestral was declined. No averment has been made in the plaint as to how and under what

circumstances, the plaintiffs were co-owners. The impugned order is also bereft of reasons. The same reads thus:-

“Learned counsel for the plaintiff has made a statement that there is technical defect in the present suit and those facts have been mentioned in the application dated 17.12.2013, therefore, he does not want to peruse the present suit. Same be dismissed as withdrawn with permission to file a fresh suit on same cause of action. Heard. In view of the statement, present suit is dismissed as withdrawn with permission to file fresh suit on the same cause of action, subject to limitation, as per law. File, after due compliance be consigned to the record room.”

In my view the suit for partition was, in fact, not maintainable.

Be that as it may, I would refrain myself from commenting any further.

In view of the totality of the circumstances noticed above, the suit cannot be said to have been suffering from inherent defect except that the plaintiffs by filing the new suit introduced the amendment which was dismissed by the trial Court.

The impugned order is set-aside and the revision petition is allowed.

February 26, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No