

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4517 of 2017
Date of Decision: May 15, 2019

Jaimeet Singh

...Petitioner

Versus

Gurucharan Singh @ Tikka (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Jeetender Gupta, Advocate,
for the petitioner.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 24.04.2017 (Annexure P-5), whereby the application of the petitioner-plaintiff for recalling of the order dated 21.03.2012 and restoration of the suit, has been dismissed.

Petitioner-plaintiff Jaimeet Singh in the suit sought the declaration and partition by way of separate possession of property bearing House No.556-L, Model Town Panipat measuring 18 marlas 8 sarsai by filing the suit in 2006. In the aforementioned suit, plaintiff claimed 1/3rd share in the suit property owned by Labh Singh. It was said to be ancestral property in which he had a right on account of the death of his father Kanwal Jeet Singh and grand-father Labh Singh. Defendant No.1 was none else but his uncle and defendant No.2 the grand-mother.

Mr. Jeetender Singh, learned counsel for the petitioner

submitted that under the wrong advice, mother and the guardian of the minor plaintiff filed an application for permission to withdraw the suit on the technical ground that the plaintiff wanted to change the suit from 1/3rd entitlement in the suit property to 1/2th and vide order dated 21.03.2012, the suit was permitted to be dismissed as withdrawn by declining permission. It is in these circumstances, application (Annexure P-4) was filed, but the same has been dismissed by holding that the petitioner-plaintiff should have availed the alternative remedy. The impugned order is not sustainable in the eyes of law as provisions of Article 100 of the Limitation Act relied upon by the trial Court would not be a bar to move such application as the expression “other than a suit” clearly carves out an exception. No hardship and prejudice would be caused and the relief can always be moulded under Order 7 Rule 7 CPC.

This Court, on 27.07.2017, issued notice of motion. However, respondent No.1(c) and 5 refused to accept the notice and service of these respondents was complete and on an application, the remaining respondents were ordered to be served through publication, which was effected, but there is no representation on their behalf. They have not been appearing for many dates, accordingly, I proceed to decide the revision petition on merits.

I have heard the learned counsel for the petitioner-plaintiff, appraised the paper book and of the view that the trial Court ought not to have taken the technical approach in declining the application as petitioner wanted to confine the claim from 1/3rd to 1/2th. Provisions of Order 7 Rule 7 CPC read thus:-

“7. Relief to be specially- Every Plaint shall state specifically the relief which the plaintiff claims either simply or in the

alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.”

The court below remained totally oblivious of its power or the provision of the statute. In such circumstances, the petitioner should have been given permission to file the suit and in the absence of the same, the application moved should have been entertained. Article 100 of the Limitation Act, as has been held to be applicable, cannot be a sole ground for refusal as the expression “other than a suit” cannot come in the way of the petitioner.

Resultantly, the impugned order is hereby set-aside. Suit is ordered to be restored to its original number. Revision petition stands allowed.

May 15, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No