

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

CR-6028-2017 (O&M)
Date of decision: 21.08.2019

Ram Nath

...Petitioner

Versus

Hari Ram and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Raj Kapoor Malik, Advocate for the petitioner.

Mr. S.K. Aggarwal, Advocate for the respondents.

H.S. MADAAN, J.

This revision petition is directed against order dated 08.08.2017, passed by Addl. District Judge, Kaithal, vide which, an application under Order 44 Rule 1 CPC filed for permission to institute an appeal as an indigent person by the revisionist was dismissed.

Briefly stated facts of the case are that plaintiff Hari Ram had brought a suit against defendant Ram Nath, impleading Vinod Kumar as a proforma defendant, seeking possession of 250 sq. yards of land forming part of total land measuring 09 kanals and 0 marla, situated within municipal limits of Kaithal town on the averments that defendant No.1 (Ram Nath), alleging himself to be owner in possession of the suit land, sold the same to plaintiff and defendant No.2 (Vinod Kumar) in equal shares, vide sale deed dated 24.02.2011 for a sum of Rs. 4 lacs. Subsequently, it transpired that defendant No.1 was not owner of the suit

land and was not competent to sell it to plaintiff and defendant No.2. Jai Bhagwan and Vijay Gupta did not allow the plaintiff and defendant No.2 to raise construction, telling them that defendant No.1 had no title to the suit property. In that way, plaintiff and defendant No.1 were deprived of the land purchased by them, vide sale deed dated 24.02.2011. The plaintiff prayed that a decree for possession, directing defendant No.1 to give possession as owner of the area equivalent to the area purchased by the plaintiff and defendant No.2, vide sale deed dated 24.02.2011 that in case the Court came to the conclusion that this relief could not be granted, then, a decree for recovery of Rs. 4 lacs along with interests and other charges be passed in his favour.

On being put to notice, defendant No.1 had appeared. Defendant No.1 Ram Nath had contested the suit, however, vide judgment and decree dated 14.01.2016, the suit of the plaintiff was decreed by Addl. Civil Judge (Sr. Divn.), Kaithal and the plaintiff was found entitled to recover an amount of Rs. 30 lacs with interest @ 6% p.a., from the date of registration of sale deed till realization of that amount and defendant No.1 was directed to make such payment to plaintiff within a period of three months, failing which, the plaintiff could recover the amount through process of law.

Feeling aggrieved by such judgment and decree, the defendant had filed an appeal before District Judge, Kaithal, which was assigned to Addl. District Judge, Kaithal.

Defendant/appellant Ram Nath had moved an application under Section 33 of CPC (wrongly mentioned) to file the appeal as a

pauper contending therein that he was not having means to pay the requisite Court fee for filing the appeal and he be allowed to file the appeal as pauper. That application was resisted by the respondent/plaintiff and vide detailed order dated 08.08.2017, Addl. District Judge, Kaithal, dismissed the application leaving the defendant/appellant aggrieved and he has filed the present revision petition, notice of which was given to plaintiff/respondent, who has appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the revision petition is absolutely lacking merit. The order passed by learned Addl. District Judge, Kaithal is well reasoned. It does not suffer from any illegality or infirmity, much less apparent on the face of it. The order is certainly not perverse or passed in violation of settled legal provisions. The reasoning given by learned Addl. District Judge, Kaithal is contained in para Nos.11 to 13, which for ready reference is reproduced as under:-

“11. Now coming to present case in hand, as per order 32 Rule 2 CPC, the appellant while moving an application as an indigent person must contain the detail of the movable or immovable property belonging to the appellant in such an application. There is no such averment on the file.

12. Moreover, there is report of Collector in which it has been mentioned that the financial condition of the appellant is reasonable. The appellant has filed the present appeal against the order of the then learned Additional Civil Judge (Sr.Divn.), Kaithal, who decreed the suit for possession filed by one Hari Ram against appellant/applicant. Hari Ram had come up with the plea that defendant No.1 i.e. the present appellant Ram Nath has sold the land in question in his favour vide sale deed

*No.7417 dated 24.2.2011 for a sum of ₹ 4,00,000/-. After going through the merit of the case, learned trial Court believed the version of the plaintiff and decreed the suit of the plaintiff for recovery of ₹ 30,00,000/- along with interest at the rate of 6% per annum from the date of registration till final realization. It is against this order that the appellant-defendant No.1 has come in appeal. There is no explanation put forward by the appellant-defendant No.1 as to what happened to the money received by him in pursuance of the sale deed as alleged. In CR No.4747 of 2017 titled as **Prem Singh Versus Gian Singh** Date of decision: 4.07.2017 our own Hon,ble High Court held as under:-*

Be that as it may, it is undisputed position of the case that the petitioner received Rs.5,00,000.00 as earnest money for sale of his land by way of agreement on the basis whereof, the respondent filed a suit for specific performance of agreement to sell. Perusal of the application (Annexure P4) filed by the petitioner seeking permission to file the appeal as an indigent person would make it evident that there is not even a whisper as to how the petitioner dealt with the amount of Rs.5,00,000.00 admittedly received by him towards earnest money. A relevant extract from para 3 of the application reads as follows:-

“That the appellant/defendant is a very poor man and is not earning anything. He and his wife are dependent upon the old age pension which is paid by the Haryana Govt. and no other movable and immovable assets except the suit land which cannot be sold because of the fact that it is a suit property. The defendant/appellant is pulling on his life with the help of old age pension as mentioned above and the vegetable and food grains sown in the suit land which is less than ½ killa.”

No doubt, the petitioner makes a mention that he does not own or possess any other movable or immovable assets sufficient to pay the Court fee but he has not explained about the sum of Rs.5,00,000.00. Once the petitioner has not made any averment with regard to amount of Rs.5,00,000.00, there was no occasion for the Court to record any evidence in this regard. In this view of the matter, I do not find any error if the Court of appeal has taken into consideration the amount of Rs.5,00,000.00 for deciding competency of the petitioner to file the appeal as an indigent person or otherwise.

13. Accordingly, applicant being in possession of a house of 200 square yards, his financial status is of reasonable quality as per report of Collector and the Court holding him having received ₹ 4,00,000/- in pursuance of the property sold by him to the plaintiff, it cannot be said that he is a person not having sufficient means to pay the court fee. Accordingly, there is no merit in the present application and the same stands dismissed. Papers be tagged with the main appeal.”

Learned counsel for the petitioner has referred to judgments **Yogesh Kumar Vs. Begraj 2010(5) Law Herald 4204** and **Kartar Singh and another Vs. Rup Singh, 1990(2) PLR 448.**

On the other hand, learned counsel for the respondent/plaintiff has placed reliance on a judgment by a Co-ordinate Bench of this Court **Prem Singh Vs. Gian Singh**, passed in CR-4747-2017 on 24.07.2017, wherein the application for permission to sue in form of pauper was declined for the reason that the appellant/defendant had not explained as to what happened to amount of Rs. 5 lacs received by him from the plaintiff. In this case also, the defendant has not explained as to where the sum of Rs.4 lacs taken by him from plaintiff and defendant No.2 as consideration for the sale deed has gone.

The contention of learned counsel for the revisionist that the said amount has since been spent by the revisionist on household expenses etc. does not seem to be convincing. The application filed by the revisionist before the District Judge, Kaithal seeking permission to file an appeal without requisite Court fee is quite vague, lacking in material details and no schedule of the properties owned by the appellant

duly verified has been attached. Under the circumstances, there is no merit in the revision petition. The same stands dismissed.

21.08.2019

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(H.S. MADAAN)

JUDGE

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