

CR No.6192 of 2018(O&M)
Date of Decision: 16.09.2019

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. Rishab Gupta, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioners have laid challenge to the order dated 02.08.2018 passed by Civil Judge (Junior Division), Hoshiarpur vide which application filed by the petitioners under Order 1 Rule 10 CPC for becoming party defendants in the suit was dismissed.

[2]. Civil suit No.11246 of 2013 for declaration was filed by the plaintiffs/respondents No.3 and 4 against Gurdeep Singh and Gurnam Kaur regarding the estate of Harnam Kaur wife of Ram Singh. Will dated 05.04.1995 allegedly executed by

Harnam Kaur in favour of Iqbal Singh was challenged. Will dated 29.08.2004 allegedly executed by Iqbal Singh in favour of Gurdeep Singh and Gurnam Kaur was also challenged. Plaintiffs relied upon registered Will dated 11.02.1976 in respect of estate of Harnam Kaur in their favour. Civil suit No.11248 of 2013 was also filed by Harnarain Singh against Gurdeep Singh and Gurnam Kaur in respect of estate of Ram Singh. Plaintiff Harnarain Singh relied upon registered Will dated 24.05.1984 executed by Ram Singh in his favour. Defendants Gurdeep Singh and Gurnam Kaur set up a Will dated 19.09.1990 executed by Ram Singh in their favour which was registered after the death of Ram Singh on 16.04.1991.

[3]. The said suit was dismissed by the trial Court vide judgment and decree dated 30.01.2017. Trial Court observed that the parties could not prove their respective Wills under which they were claiming estate of Ram Singh, therefore, the parties were held entitled for devolution of property by way of natural succession. Trial Court dismissed the suit on the ground of non-joinder of necessary parties as the daughters were not impleaded in the suit.

[4]. A separate suit is statedly pending in respect of estate of Ram Singh. Harnam Kaur had died on 09.06.1995. Mutation was sanctioned in respect of Will more than 20 years ago.

Mutation was never assailed at any point of time. The application for additional evidence filed by the plaintiffs was dismissed and the said order was upheld by the High Court. The suit has already reached the stage of rebuttal evidence and arguments.

[5]. At this stage, application under Order 1 Rule 10 CPC came to be filed by the daughters of Harnam Kaur to which plaintiffs showed no objection. It was only at the objection of contesting defendants/respondents No.1 and 2, the application was dismissed by the trial Court on the premise that the same has been filed after more than 24 years. After the demise of Harnam Kaur on 09.06.1995, petitioners never sought their right in the property of Harnam Kaur. They were having knowledge about the death of Harnam Kaur and the succession could not remain in abeyance for all times to come. The mutation was sanctioned after the demise of Harnam Kaur on the basis of Will. Petitioners did not seek any such impleadment in Civil Suit No.11248 of 2013 in respect of estate of Ram Singh which was dismissed for want of necessary parties.

[6]. At this stage of the suit, acceptance of the application would give rise to *de novo* trial of the case. Independent suit in respect of estate of Ram Singh has already been filed. Petitioners if so advised, may also resort to their remedies in

accordance with law.

[7]. In my considered opinion, the trial Court has not committed any error of jurisdiction while dismissing the application under Order 1 Rule 10 CPC. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

16.09.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No