

(107) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.230-CII of 2019 and
CR No.7200 of 2018
Date of decision: 11.01.2019

Ram Asra (deceased through his LRs)

..... Petitioners

Versus

Jaspal Kaur and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Arihant Jain, Advocate for the applicants/petitioners.
Mr. Sheery K. Singla, Advocate for respondent No.1.

B.S. WALIA, J. (ORAL)

CM No.230-CII of 2019

Mr. Sherry K. Singla, Advocate has put in appearance on behalf of contesting respondent No.1 and has filed his Vakalatnama in Court today. The same is taken on record.

Application has been filed by the applicants/petitioners for staying the passing of final order in the main suit by the learned Civil Judge (Jr. Div.), Amloh.

With the consent of learned counsel for the parties, the main case is pre-poned to today and is taken on Board.

In the circumstances, learned counsel for the applicants/petitioners does not press the application, therefore, the same is dismissed as not pressed.

CR No.7200 of 2018

[1] Revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 25.09.2018 passed by the learned Civil Judge (Jr. Div.), Amloh vide which the application for impleading the LRs of defendant No.1 Ram Asra has been dismissed.

[2] Brief facts of the case leading to the filing of the revision petition are that contesting respondent No.1/plaintiff filed a civil suit for permanent injunction for restraining defendants (including petitioners) from interfering in his peaceful possession over the suit land.

[3] Defendants (including petitioners) filed a counter claim for a declaration that they were owners in possession of the suit land on the basis of oral family exchange executed between the parties. On the death of defendant No.1 – Ram Asra on 25.05.2017 and in view of his having executed a registered Will dated 24.12.2012 in favour of his grandsons (i.e. petitioners herein), an application was moved for impleading them as party to the suit. In reply thereto, it was mentioned that the application was not maintainable and was filed to prolong the proceedings as the application had been filed after the lapse of more than one year.

[4] The application for impleading the LRs of defendant No.1 – Ram Asra was dismissed by the learned Civil Judge (Jr. Div.), Amloh on the ground that since the suit was for permanent injunction on death of defendant No.1, deceased Ram Asra, the personal cause of action also abated in view of decision in the case of Puran Singh v. State of Punjab, (1996) 2 SCC 205.

[5] Learned counsel for the petitioner has contended that the learned Civil Judge (Jr. Div.), Amloh failed to take into account that a counter-claim had also been filed and the petitioners herein were the

beneficiaries under the Will executed by the deceased/defendant No.1 – Ram Asra in their favour, therefore, the maxim *action personalis moritur cum persona* as relied upon by the learned trial Court was not applicable in the facts of the case, consequentially, the impugned order was legally unsustainable and liable to be set aside and the petitioners impleaded as the LRs of deceased/defendant No.1 – Ram Asra.

[6] Per contra, learned counsel for contesting respondent No.1/plaintiff states that he has no objection to the impleadment of the petitioners as LRs of deceased/defendant No.1 – Ram Asra and the only concern of respondent No.1 is that since the suit was filed in the year 2010 and a number of years have lapsed, on impleadment of the petitioners, the conclusion of the suit would be delayed. Learned counsel states that he has no objection to the impleadment of the petitioners as LRs of deceased/defendant No.1 – Ram Asra, but prays that the learned trial Court be directed to decide the civil suit expeditiously.

[7] In view of the position as noted above, revision petition is allowed. Impugned order dated 25.09.2018 passed by the learned Civil Judge (Jr. Div.), Amloh is set aside. Petitioners are ordered to be impleaded as LRs of deceased/defendant No.1 – Ram Asra. Learned trial Court shall endeavour to decide the suit in accordance with law as expeditiously as possible.

(B.S. Walia)
Judge

11.01.2019
Amit

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| 1. | Whether speaking/reasoned : | Yes/No. |
| 2. | Whether reportable : | Yes/No. |