

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7660 of 2016 (O&M)
Date of Decision : 06.12.2019

Jagtar Singh

.....Petitioner

Versus

Harbhajan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Satinder Khanna, Advocate for the petitioner.
Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate for respondent No.1.

ARUN PALLI, J. (Oral)

Petitioner (defendant No.1) is in revision aggrieved by an order dated 19.08.2016, passed by the Civil Judge (Jr. Divn.), Ludhiana, vide which the application moved by respondent-plaintiff No.1 for restoration of the suit that was dismissed as withdrawn has since been allowed.

In a suit filed by respondent Nos.1 and 2, they have prayed for a declaration that they are owners in possession of the property bearing MC No.137/3 (old) and 808 (new), measuring 500 S.Y., comprised in specific khasra numbers as depicted in cause title of the plaint. Further, the sale deed dated 15.02.1971, alleged to have been executed by their father Harnek Singh in favour of Mukhtiar Singh was not binding upon their rights and be declared as null and void. However, the attorney of respondent No.1 namely Lakhvir Singh, through whom the said suit was filed, suffered a statement on 22.03.2013, that he had instructions not to

pursue the matter further, therefore, the suit be dismissed as withdrawn. Accordingly, the Civil Judge (Jr. Divn.), Ludhiana, vide order dated 22.03.2013, dismissed the suit as withdrawn qua respondent No.1 (plaintiff). Subsequently, respondent No.1 moved an application through his newly constituted attorney Angrej Singh, seeking restoration of the suit and upon consideration thereof the trial Court allowed the said application and permitted the plaintiff No.1 to pursue the suit.

Learned counsel for the petitioner submits that reasons assigned by the trial Court that the then attorney holder of plaintiff No.1 Lakhvir Singh played fraud upon him and, therefore, the suit was required to be restored, are wholly erroneous as this was not even the case set out in the application moved by the plaintiff No.1. Further, this was not the case of respondent-Harbhajan Singh either that he had not instructed Lakhvir Singh, his attorney, to suffer any such statement. Thus, he asserts, the trial Court ought not to have accepted the application.

On the contrary, learned counsel for respondent No.1 submits that no prejudice is caused to the petitioner vide order that is being assailed, for, the suit was as it is being pursued by respondent No.2 and was still at an early stage.

Undoubtedly, the averments set out in the application moved by respondent No.1 seeking restoration of the suit were deficient and it was not his case that his attorney Lakhvir Singh had played fraud upon him. However, what further needs to be noticed is: vide order dated 22.03.2013, the suit was dismissed as withdrawn only qua plaintiff No.1, whereas all

this while it was being tried on behalf of plaintiff No.2. Concededly, plaintiff No.1 (Harbhajan Singh) and plaintiff No.2 (Satveer Singh) happened to be real brothers. It is not disputed either that their interest and the relief prayed for in the present suit was/is common. Thus, the impugned order dated 19.08.2016, as such causes no prejudice to the petitioner. Not just that, the impugned order was passed nearly 3 ½ years ago and in absence of any interim stay the trial continued to proceed, and in the interregnum the suit has covered a considerable ground. Counsel for the parties are ad idem that evidence of the plaintiffs is being recorded. Significantly, post passing of the impugned order dated 19.08.2016, the petitioner has been duly participating in the proceedings.

In the wake of the above and to secure the ends of justice, this Court is dissuaded to interfere with the discretion exercised by the trial Court. Therefore, revision petition stands dismissed.

06.12.2019

*Manoj Bhutani***(ARUN PALLI)**
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No