

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 202

CR-7677-2016 (O&M)

Date of decision : 31.01.2019

Daljit Kaur (since deceased)
through his LR Sukhdarshan Singh

..... Petitioner

VERSUS

Sewak Manjit Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Saurav Bhatia, Advocate, for
 Ms. Avleen Kohli, Advocate, for the petitioner.

Mr. Gurcharan Dass, Advocate, for respondent No. 1.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 10.10.2016, passed by the Civil Judge (Junior Division), Ludhiana (for short, the Trial Court), directing respondent No. 1-Sewak Manjit Singh to be impleaded as plaintiff-Daljit Kaur's legal representative.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that Daljit Kaur filed a suit through which she sought decree dated 16.10.1995 to be declared null and void. Through decree dated 16.10.1995 the property which was detailed and described in the headnote of the plaint (for short, the suit property) had been transferred by Daljit Kaur in favour of the respondents.

On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and through their written statement disputed Daljit Kaur's claim. Before the issues could be framed by the Trial Court, on 11.01.2005 Daljit Kaur died. On the basis of an application filed by petitioner-Sukhdarshan Singh, through order dated 30.07.2015 the Trial Court impleaded him as legal representative of Daljit

Kaur which order was challenged before this Court by respondent No. 1- Sewak Manjit Singh through a revision petition being CR-7635-2015 “*Sewak Manjit Singh vs Sukhdarshan Singh and another*”. Such revision petition was dismissed by this Court on 12.01.2016 and the operative part of such order reads as under:-

“Concededly, the court below has not recorded any finding in regard to correctness and genuineness of the Will propounded by the petitioner. Smt. Daljit Kaur filed the suit against the defendants including the petitioner levelling serious allegations of fraud and collusion in obtaining decree dated 16.10.1995 in respect of land measuring 257 kanals 10 marlas. As Smt. Daljit Kaur has levelled allegations against the petitioner that he is a privy to the fraud committed by the defendants, no fault can be found in the orders passed by the Court rejecting his claim to represent Smt. Daljit Kaur in the pending suit. Though the petitioner has admitted the claim that the impugned decree is the result of fraud but he has not admitted the allegations of fraud and collusion qua him and has tried to shift the burden upon his brother Gursharanjit Singh. There is no material on record at this stage to accept the submissions of the petitioner that Sukhdarshan Singh respondent No.1 impleaded as legal representative of Smt. Daljit Kaur would not pursue the proceedings in earnestness. This apart, the petitioner is one of the parties to the litigation and he would be at liberty to file an appropriate application before the trial Court in case, at any stage, he has a cause to express any grievance against Sh. Sukhdarshan Singh representing Smt. Daljit Kaur. I do not find any error much less illegality in the impugned orders as would call for intervention.

For the reasons aforesaid, the petition is dismissed. No order as to costs.”

A perusal of the afore quoted order reveals that while upholding the order of the Trial Court impleading the petitioner as the legal representative of Daljit Kaur, liberty was granted to respondent No. 1 to file an appropriate application before the Trial Court if at any stage of the proceedings the petitioner was found to be acting against the interests of Daljit Kaur.

As per liberty granted by this Court respondent No. 1 filed an application before the Trial Court as according to him the petitioner had

filed an affidavit before the Trial Court through which he had virtually admitted the respondents' claim. The Trial Court concluded that the petitioner through his affidavit had acted against the interests of the original plaintiff/Daljit Kaur and thus, directed that now it would be respondent No. 1-Sewak Manjit Singh, who shall be impleaded as the legal representative of Daljit Kaur. Such order is the subject matter of challenge before this Court at the hands of the petitioner.

Learned counsel for the parties have been heard.

Daljit Kaur had filed a suit seeking therein to declare as null and void a consent decree dated 16.10.1995 through which the suit property had been transferred by Daljit Kaur in favour of the respondents. On Daljit Kaur's death, at an earlier point of time, the Trial Court had held that respondent No. 1-Sewak Manjit Singh, being a defendant and beneficiary under the consent decree which had been challenged through the suit filed by Daljit Kaur, should not be impleaded as Daljit Kaur's legal representative and accordingly, directed impleadment of the petitioner-Sukhdarshan Singh as her legal representative. Such order was upheld by this Court in a revision petition preferred against it by respondent No. 1. However, to safeguard the interests of Daljit Kaur, this Court granted liberty to respondent No. 1-Sewak Manjit Singh to file an appropriate application before the Trial Court in case the petitioner, at any time in the proceedings was found to be acting against the interests of Daljit Kaur. As per liberty granted by this Court, respondent No. 1 filed an application before the Trial Court on the ground that by filing an affidavit the petitioner had virtually admitted the respondents' case and thus acted against Daljit Kaur's interests.

The relevant portion of the affidavit filed by the petitioner reads as under: -

“2. That in the year 1994-95, the plaintiff was living with the defendants namely Sewakmanjit Singh and Gursharanjit Singh with their jointmess and she was treated them like her sons being the sons of her brother Albel Singh. The plaintiff also transferred the suit land which was inherited by her from her father to the defendants by way of consent decree dated 16/10/1995 passed by the Court of Smt. Gurmeet Kaur, the then PCS Sub-Judge, III Class, Ludhiana in Civil Suit No. 189 dated 09/03/1995, titled as “**Sewakmanjit Singh etc. Versus Daljit Kaur**”.”

In view of the above, it is not safe to implead either the petitioner or the respondents as the legal representatives of Daljit Kaur. However, to safeguard her interest, the Trial Court is directed to first frame an issue as to who is the legal representative of Daljit Kaur and then proceed with her suit after impleading such legal representative in her place.

The present petition is disposed of in the above terms.

31.01.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No