

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

102

CR No.7862 of 2014 (O&M)
Date of decision:15.2.2019

Saroj Devi and others

... Petitioners

versus

Indrawati and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.J.K.Goel, Advocate,
for the petitioners
Mr.Vikram Singh, Advocate,
for respondent no.1.

...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioners have challenged the order passed by the learned Civil Judge (Senior Division) Karnal, dated 20.8.2014 (copy Annexure P-9), by which respondent no.1 herein (petitioner before the trial Court), on an application filed under Order 7 Rule 11 CPC seeking to withdraw the petition 'on technical grounds' (with no specific grounds actually given in the application, a copy of which is annexed as Annexure P-8 with the petition), has been allowed to do so, with the trial Court holding as follows:-

“In view of the statement of petitioner Indrawati, the present petition under Section 372 of the Indian Succession Act, is hereby dismissed as withdrawn with the permission to file fresh petition/suit on same cause of action subject to law of limitation. File be consigned to the record room after due

compliance.”

Thus, liberty has been granted to the 1st respondent, vide the impugned order, to file a fresh suit/petition on the same cause of action, with that part of the order being a cause of grievance to the petitioner.

Before observing as above, the impugned order opens with the line that the reply to the application under Order 7 Rule 11 CPC had not been filed (by the present petitioner).

After the 1st (contesting) respondent put in an appearance upon notice having been issued in the petition (with the case having been adjourned time and again on the request of counsel), eventually on 11.2.2019, the following order had been passed by this Court:-

“Mr. Goel, learned counsel for the petitioners, upon query points to the application filed by the petitioner under Order 7 Rule 11 CPC before the learned trial Court in the petition instituted by the respondent herein under Section 372 of the Indian Succession Act, wherein it is stated that the matter as regards the status of the respondent as the wife/widow of late Rampal already stands settled in a previous *lis* right upto this Court and on that ground alone the petition under Section 372 Cr.P.C. was not maintainable.

He thereafter points the fact that without any reply filed to the application under Order 7 Rule 11 CPC, the respondent filed an application seeking to withdraw her petition on “technical grounds”(copy Annexure P-8), seeking permission to file a civil suit qua the same relief, which permission had

been granted vide the impugned order, subject to the civil suit being instituted within limitation.

Learned counsel for the respondent not being present today which is seen to be so even on the last date of hearing when the case actually came up i.e. 27.3.2018.

Adjourned to 15.2.2019.

To be shown in the urgent list.”

2. Today, Mr.Vikram Singh, Advocate, appears for respondent no.1 and submits that no reasoning actually having been given in the impugned order, the order may be set aside, with the trial Court directed to pass a fresh reasoned order.

3. Learned counsel for the petitioners however reiterates that the issue of respondent no.1 being the wife/widow of the late Ram Pal already having been settled in a previous *lis* right up to this Court by way of CR No.2823 of 2013, decided on 21.2.2014, the liberty granted by the trial Court to file a fresh suit is wholly impermissible.

He further submits that even in the application filed under Order 7, Rule 11 before the trial court (copy annexed as Annexure P-8), the 1st respondent herein had given no reason for withdrawing the petition and filing a fresh one.

4. Having considered the aforesaid arguments, though what Mr.Goel, learned counsel for the petitioners, is saying would *prima facie* seem to be correct by this Court in view of the fact that in CR No.2823 of 2018 instituted by respondent no.1 herein, this Court had already held that the marriage of Indrawati, i.e. respondent no.1 herein, with Ram Pal, cannot

be said to be a valid marriage as he had not taken a divorce from his first wife prior to his marriage with Indrawati, (with that order in fact having been challenged before the Supreme Court by respondent no.1 by way of SLP (Civil) no.12374 of 2014 which was dismissed), however, since the impugned order is actually bereft of any reasoning whatsoever, without making any further comment, this petition is allowed and the said order set aside. The trial Court is directed to pass a fresh order on the application filed by respondent no.1 herein seeking to withdraw the petition with liberty to file a fresh one, specifically giving reasons therein if liberty is to be given to her to file a fresh suit/petition on the same cause of action (if in the opinion of that court, such liberty should be so given).

Naturally, any arguments raised by respondent no.1 herein as to why such liberty should be granted in spite of the dismissal of her revision petition by this Court and the SLP subsequently filed by her, would be noticed by the trial Court in its order.

15.2.2019
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No