

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 7600 of 2019

Date of Decision: 21.01.2020

Gurcharan Singh (since deceased)

... Petitioner(s)

Versus

Harjit Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. P.K.S.Phoolka, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

Defendant No.1/petitioner has filed the present revision petition against order dated 05.12.2018, passed by the learned Civil Judge (Junior Division), Bathinda refusing to dismiss the suit having become infructuous after delivery of possession to defendant No. 1(a) on 09.08.2017.

The learned trial Court while considering the application has recorded the reasons as under:-

“4. The present case is filed by the plaintiffs for declaration to the effect that judgment and decree dated 09.02.1994 passed in civil suit no.195 of 12.03.1991 decided on 09.02.1994 titled as Gurcharan Singh and others Vs. Gurdas Singh and others is illegal, null and void and same has been brought into existence by fraud and misstatement of facts. The instant application is filed by the defendant for dismissing the suit as possession of the suit property has already been delivered to him. Perusal of

plaint reveals that the impugned judgment and decree has been challenged by the plaintiffs on the ground of fraud as defendant filed the above said suit against the dead persons. When defendant no.1 filed a suit in the year 1994, Basant Kaur, Kartar Kaur, Gurdarshan Singh and Niranjana Singh were already expired. Even, defendant no.1 did not implead the legal representatives of above said persons at the time of filing the suit.

5. *It is settled law that for the purpose of deciding the application for rejection of the plaint, the court has to pursue the contents of plaint only and the specific plea of the plaintiffs is that defendant no.1 filed the suit against dead persons and got the decree in his favour. It is true, the decree against dead persons has no value in the eyes of law. Further, the defendant challenged the present suit on the ground of limitation. It is settled law that question of limitation is mixed question of law and facts and that issue cannot be decided at this stage and it will be adjudicated only after giving opportunity of leading evidence. The defendant no.1 has also attacked upon the suit of plaintiffs on the ground that possession of the property has already been delivered to him and plaintiffs have no locus-standi to file the present suit. The defendant no.1 has got possession in the execution of impugned decree and mere delivering the possession defendant no.1 through court in execution, does not make the ground to dismiss the suit of*

plaintiffs.

6. *As far as the question of locus-standi of plaintiff to file the suit is concerned, plaintiffs being legal heir of Basant Kaur have locus standi to challenge the decree which has been obtained by impleading her on the date when she was already expired”.*

This Court has heard learned counsel for the petitioner. Learned counsel for the petitioner, although made sincere attempt, however, failed to draw any attention of the Court to substantive error in the impugned order.

In view of above, no ground is made out to interference. As such, the present petition shall stand dismissed.

(Anil Kshetarpal)
Judge

January 21, 2020
“DK”

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