

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

117

CR-611-2021

Date of Decision : March 15, 2021

BALDEV SINGH (SINCE DECEASED) THROUGH HIS LR

.....Petitioner

VERSUS

FAQUIR CHAND

.....Respondent

CORAM: HON'BLE MR. JASGURPREET SINGH PURI

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

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Article 227 of the Constitution of India with the prayer for setting aside of the impugned order dated 8.2.2021 (Annexure P-1) passed by the Learned ACJ (Senior Division), Bathinda, whereby the application filed by the petitioner (Kirpal Kaur) to permit her to file her affidavit as plaintiff has been dismissed.

The learned counsel for the petitioner has submitted that the original suit was filed by one Baldev Singh and he had deposed before the Learned Trial Court and was also partly cross-examined and thereafter he had closed his evidence and thereafter, the evidence of the defendant was led. Thereafter, the matter was fixed for rebuttal evidence and the Court had allowed further cross-examination of said Baldev Singh. However, before the same could be done, the said Baldev Singh

had died on 15.5.2019 and the petitioner had stepped into the shoes of Baldev Singh as LR of the same. He has submitted that he had filed an application for filing of an affidavit of Kripal Kaur (LR) but the same has been erroneously declined by the Learned Civil Judge. He has further submitted that the plaintiff is entitled to tender in evidence her affidavit for the purpose of just adjudication of the case.

I have heard the learned counsel for the petitioner and have also perused the order passed by the Learned ACJ (Senior Division), Bathinda, vide Annexure P-1, which is the impugned order in the present revision petition.

A perusal of the order would show the sequence of events, wherein it is stated that Baldev Singh had appeared as PW1 and had tendered affidavit on 5.07.2017 and thereafter, he was partly cross-examined on 22.09.2017 and thereafter, the said Baldev Singh himself closed his evidence on 10.01.2018 vide his statement alongwith his counsel and thereafter, the defendant led his evidence and thereafter, the matter was fixed for rebuttal evidence and arguments vide order dated 9.04.2019 and the further cross-examination of plaintiff Baldev Singh was allowed but thereafter, the said Baldev Singh had died on 15.5.2019. Thereafter, the present petitioner, namely, Kirpal Kaur was impleaded as LR of Baldev Singh. Now the newly impleaded LR wishes to tender into evidence her affidavit as a plaintiff. The Learned ACJ (Senior Division), Bathinda has, however, declined the prayer of the petitioner on the ground that once Baldev Singh, who was the original plaintiff had filed affidavit and he was even partly cross-examined and now the matter is at

its fag end of the trial then the present petitioner, namely, Kirpal Kaur cannot be permitted to file another affidavit as a plaintiff because this will amount to a *denovo* trial. Once Baldev Singh himself had deposed as PW1 by tendering into evidence his affidavit on 5.07.2017 and he has even been partly cross-examined and thereafter, he has closed his evidence now the LR who has stepped into the shoes of plaintiff-Baldev Singh cannot file another affidavit in the form of evidence. Baldev Singh was her predecessor-in-interest, who had already crossed the stage of filing the affidavit and, therefore, permitting the present petitioner, namely, Kirpal Kaur to file an affidavit as an evidence would certainly amount to *denovo* trial.

In view of the above, no illegality or perversity can be found in the order passed by the Learned ACJ (Senior Division), Bathinda and, therefore, the present petition is devoid of merit and consequently dismissed.

March 15, 2021
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No