

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

**CR-3661-2022
Decided on:-05.09.2022**

Balwinder Singh

....Petitioner

vs.

Hazara Singh and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Pankaj Bali, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

By way of present revision petition, petitioner has challenged the impugned order dated 04.08.2022, whereby an application under Order 6 Rule 16 of the CPC, filed on his behalf for striking off the pleadings i.e. written statement filed on behalf of respondents-defendant, has been dismissed.

2. The petitioner/plaintiff filed a suit for declaration before the learned Trial court, challenging the release deed dated 19.01.2016 executed by defendant No.1/respondent No.1 in favour of defendant No.2/respondent No.3, being illegal, null & void and a result of undue influence etc. The petitioner/plaintiff also prayed for grant of consequential relief of mandatory and prohibitory injunction, restraining defendant No.2 from alienating the suit property in any manner. In response, a joint written statement was filed on behalf of respondents No.1 and 2 under their signatures. Thereafter, the petitioner moved an application for invoking

proceedings under Section 340 Cr.P.C. against defendants No.1 and 2, where in holding of preliminary inquiry was ordered on 09.12.2019.

3. During the pendency of the suit, on 04.08.2022, the petitioner/plaintiff moved an application before the learned trial court invoking Order 6 Rule 16 CPC with a prayer for striking off the written statement filed on behalf of defendants No.1 and 2 on the ground that the same was not verified as per Order 6 Rule 15 CPC as no affidavit was filed in support thereof. In response to the said application, reply was filed on behalf of defendants No.1 and 2 stating therein that a duly sworn affidavit dated 02.12.2019 attested by Notary Public from Canada was already placed on record before the trial court. Learned trial court vide its impugned order dated 04.08.2022, dismissed the application filed at the instance of the petitioner/plaintiff.

4. It has been contended by learned counsel for the petitioner that once proceedings under Section 340 Cr.P.C. were already pending in pursuance to the order dated 09.12.2019 passed by the learned trial court (Annexure P-3), the application of the petitioner should have been allowed.

5. I find no force in the contention raised by learned counsel for the petitioner.

6. Though, the proceedings under Section 340 Cr.P.C. have been initiated at the instance of the petitioner and an inquiry has been ordered, this alone cannot be taken as ground for striking off the pleadings of defendants No.1 and 2 at this stage. Proceedings under Section 340 Cr.P.C. are still at the initial stage, whereas on the other hand, the suit is already at the stage of recording of rebuttal evidence, if any, and for arguments. The appreciation of evidence in both the proceedings has to be made on two

different principles. In the proceedings under Section 340 Cr.P.C., the adjudication rests on presumption of innocence and on the point of benefit of doubt, whereas in the civil suit, the case is required to be proved based on preponderance of evidence. Thus, the mere pendency of proceedings under Section 340 Cr.P.C. cannot be taken as ground for striking of pleadings filed at the instance of defendants No.1 and 2. It would also be necessary to submit here that the dispute is regarding signatures of Hazara Singh, only, whereas the written statement has been signed by Jaswant Singh also i.e. defendant No.2 and there is no dispute about the signatures of Jaswant Singh on the written statement. Once, the written statement has been signed/verified by Jaswant Singh i.e. defendant No.2 being one of the defendants, it cannot be said that there is any violation of Order 6 Rule 15 CPC as in view of sub-rule (1) of Rule 15 of Order 6, pleadings can be signed by even any one of the parties. No other point has been argued.

7. Finding no merit in the instant revision petition, the same is hereby dismissed with no order as to costs.

(HARKESH MANUJA)
JUDGE

05.09.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No