

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

CR-5386-2022 (O&M)
Date of decision: 22.11.2022

Hukam Singh

...Petitioner

Versus

Saravjit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Sahil Khunger, Advocate for the petitioner.

H.S. MADAAN, J.

This revision petition is directed against order dt. 04.08.2022 passed by Addl. Civil Judge (Sr. Divn.) Ellenabad, vide which application filed by the revisionist/plaintiff for setting aside order dt. 14.12.2019 passed by SDJM/ACJSD-cum-Presiding Officer, National Lok Adalat, Ellenabad had been dismissed.

Briefly stated facts of the case are that plaintiff Hukam Singh, then aged 98 years had brought a suit against Saravjit Kaur, Jasveer Kaur, Veerpal Kaur as well as Sub Registrar, Rania, District Sirsa seeking a declaration that he is in cultivating possession of the land measuring 16K-0M situated at Village Rania, District Sirsa, however, defendant No.1 in collusion with defendants had suffered alleged sale deed No.853 dt. 24.05.2017 in favour of defendants No.2 and 3 and mutation has been sanctioned on the basis of that sale deed. According to

the plaintiff, the sale deed and mutation sanctioned on the basis thereof are result of fraud, concealment of facts, misrepresentation etc., in effective qua rights of the plaintiff and liable to be set aside. In addition to that, the plaintiff sought relief of permanent injunction restraining the defendants No.1 to 3 from interfering into peaceful cultivating possession of the plaintiff over the suit land.

Notice of the suit was given to the defendants. Defendants No.2 to 4 had put in appearance, whereas, defendant No.1 did not appear despite service and was proceeded against ex parte. During the pendency of the suit before Civil Judge (Jr. Divn.) Ellenabad which was put up before the Court of Sh. Dushyant Chaudhary, Addl. Civil Judge (Sr. Divn.) Ellenabad in Lok Adalat and was dismissed as withdrawn, vide order dated 14.12.2019. Subsequently, the plaintiff filed an application before the trial Court seeking setting aside of order dt. 14.12.2019 and restoration of the suit contending that on account of his old age of 106 years, he had been residing with his son Bhagwan Singh. In the month of November, 2019 the applicant was taken by his another son Harnam Singh to his house. Thereafter, defendants No.1 to 3 with a mala fide intention and collusion with Harnam Singh took the plaintiff to Court premises at Ellenabad producing him before the Court where his thumb impression was obtained. Thereafter, plaintiff was taken by Harnam Singh with him where he spent next one month and thereafter, he was taken by Bhagwan Singh to his house. According to the applicant after that COVID-19 broke out and applicant/plaintiff could not contact his

counsel. Subsequently when the plaintiff contacted his counsel and enquired about the proceedings of the case, he was told that his case had been dismissed as withdrawn, vide order dt. 14.12.2019, then realizing that his son Harnam Singh had played fraud with him by changing his counsel and then getting the suit withdrawn from him, when plaintiff had not compromised the matter out of his free will with the defendants. He had not made any statement for withdrawing the suit and thumb impression of plaintiff was obtained by Harnam Singh with the help of new counsel in collusion with the defendants. Therefore, order dt. 14.12.2019 be set aside.

On notice, the defendants No.2 and 3 put in appearance and contested the application, contending that it was barred by time as the suit had already been decided vide order dt. 14.12.2019 in National Lok Adalat on the basis of statement of plaintiff with regard to arriving at a compromise between the plaintiff and the defendants. The plaintiff was identified by Sarpanch, Gram Panchayat Village Theri Mohar Singh, Rania. The plaintiff had given details of the terms of the compromise and finally stated that he did not want to proceed further with the suit and withdrew the same. The plaintiff had put his thumb impression on his statement before the Court in the presence of Presiding Officer as well as Sarpanch. After dismissal of the suit, plaintiff himself had transferred land measuring 8 Kanals in favour of his son Harnam Singh vide release deed No.4041 dt. 18.12.2019 which has been incorporated in the revenue record. Another civil suit filed by son of plaintiff namely Bhagwan Singh

bearing No.CS-301-2020 pending before the Court of CJJD, Ellenabad wherein Hukam Singh had put in appearance and filed written statement through counsel. Another civil suit filed by his son titled as Bhagwan Singh Vs. Harnam Singh and Hukam Singh bearing No.CS/65 of 2020 is pending in the Court of CJJD, Ellenabad. All these things go to show that the plaintiff was well within knowledge of the facts of the present case and is aware what is good or bad for him. The answering defendants prayed for dismissal of the suit. No separate reply was filed on behalf of defendant No.4 and Government Pleader representing such defendant stated that the reply already filed by defendants No.2 and 3 be read for defendant No.4 itself.

After hearing arguments, the trial Court vide impugned order dt. 04.08.2022 dismissed the application, which left the applicant/plaintiff aggrieved and he has filed the present revision petition.

I have heard learned counsel for the revisionist besides going through the record and I find that the impugned order is quite detailed, well reasoned, based upon proper appreciation of the factual and legal position. The operative part of the impugned order is reproduced for ready reference:-

“13. As per order dated 14.12.2019, plaintiff/applicant had himself appeared before the Court and made a statement in the presence of learned Presiding Officer, National Lok Adalat. He also put his thumb impression in the presence of learned Presiding Officer as well as in the presence of his counsel and the then Sarpanch of village Their Mohar Singh. Accordingly on his statement only, the suit was dismissed as withdrawn.

14. Now after almost one year i.e. on 28.01.2021, the

present application for setting aside the order dated 14.12.2019 has been filed by the plaintiff Hukum Singh by alleging that at that time a fraud was played upon an old person. The application has also been filed by the plaintiff Hukam Singh only. Even after above said order, plaintiff has transferred some land in favor of his son Harnam Singh, who allegedly had taken him to the court and got his statement recorded. Two more civil suit involving plaintiff are pending before the court of Ld. Civil Judge (Junior Division) Ellenabad. Therefore, it cannot be said that on 14.12.2019, when the suit was dismissed as withdrawn, plaintiff was not in his senses.

15. The suit has been dismissed as withdrawn after following due process and only on the application of the plaintiff in this regard. Now plaintiff cannot withdraw from this statement.

No specific fraud and inducement has been pleaded by the plaintiff in his application, hence the judgments (supra) is not applicable to the facts and circumstances of the present case.”

It transpires that the plaintiff himself had withdrawn the civil suit filed by him. However, subsequently after about one year, he had a second thought and he filed the application for restoration of the suit which was rightly dismissed by the trial Court, vide impugned order. It is not sweet will of a person to file a suit, pursue it and thereafter, withdraw it from the Court and then sleep over the matter for a long time and one fine morning come up with a plea that he had not withdrawn the suit, rather he was tricked by his son in doing so.

Counsel for the petitioner/plaintiff contended that on account of old age, plaintiff was unable to consider as to what was good or bad for him and he was tricked by his son in going to the Court and withdrawing the civil suit. However, I find this contention to be

containing little merit. Old age does affect physical health and mental faculties to some extent but does not render a person susceptible to influence and pressure of others and to act on their dictates without exercising his own discretion and intelligence. Old age does not mean that a person suffers any loss in his mental faculties. Here the chain of events goes to show that the plaintiff himself had withdrawn the suit by making a statement before the Court and then he did not do anything and after about one year, filed an application for restoration of the suit which under the circumstances was rightly dismissed by the trial Court.

Learned counsel for the petitioner has referred to a judgment **Kuldeep Singh Vs. Virender Singh & Anr.**, 2014(1) PLR 403. However, that judgment is not helpful to the petitioner due to different facts and context in which such observations had been made.

I do not see any reason to interfere with the impugned order by exercising revisional jurisdiction. The revision petition is found to be without merit and is dismissed accordingly.

22.11.2022

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(H.S. MADAAN)
JUDGE

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