

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.115

Case No. : C. R. No. 5694 of 2023

Date of Decision : November 06, 2023

Rakesh Kumar		Petitioner
vs.		
Shrikant Sharma through his LRs and others		Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Rakesh Kumar – petitioner in person.

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GURBIR SINGH, J. :

1. Challenge in this petition is to the order dated 10.10.2022, passed by learned Additional Civil Judge (Senior Division), Panchkula (for brevity – the Trial Court), whereby application filed by revisionist/petitioner under Order 22 Rule 3 CPC has been dismissed.

2. Brief facts, as culled out from the paper book are that respondents no.1 to 7/plaintiffs filed suit for declaration that plaintiffs and defendant no.1 (respondent no.8 herein) are joint owners and in joint possession of the house, as mentioned in the heading of the plaint and the Will alleged to have been executed by Dina Nath and registered in favour of the petitioner (defendant no.2) in respect of the said house is illegal, null and void and also for permanent injunction restraining defendants no.3 and 4 (performa respondents no.9 and 10) to transfer the house in question in favour of anybody else except the plaintiffs (respondents no.1 to 7) and defendant no.1 (respondent no.8).

3. The petitioner/defendant no.2 is contesting the suit. He moved application under Order 22 Rule 3 CPC on the ground that Power of Attorney holder namely Shrikant Sharma i.e. plaintiff no.1 had expired on 29.05.2019. The application for impleading his legal representatives has not been filed within a period of 90 days which had already expired. Therefore, the suit stands abated.

4. The other party contested the application by filing reply and submitting therein that there is no limitation for filing application for bringing on record the legal representatives of the deceased, in view of amendment made by this Court. In case **Ram Phal and others vs. Harbans Lal and others** reported as **2014(69) RCR(Civil) 798**, it has been held by this Court that there is no limitation for bringing on record the legal representatives of the deceased and the suit would not abate.

5. Learned Trial Court held that there is no limitation to bring on record legal representatives of the deceased/plaintiff no.1 in view of amendment made by this Court. So, the application under Order 22 Rule 3 was dismissed and application under Order 22 Rule 2 was allowed and legal heirs of deceased were impleaded as his legal representatives.

6. The petitioner, who is present in person, has submitted that now, he has come to know that there is amendment in the Order 22 Rule 3 CPC and there is no limitation to file the application for impleading legal representatives. However, he has further submitted that the legal heirs were having knowledge about pendency of the case but they have not turned up, so the suit should be treated as abated. He has relied upon judgments of

Hon'ble Supreme Court in the case of **Balwant Singh (dead) vs. Jagdish**

Singh – decided on **08.07.2010** and **Mithailal Dalsangar Singh and others vs. Annabai Devram Kini and others** – decided on **16.09.2003**. It has further been submitted that the plaintiffs are trespassers and in unlawful possession of the house in question. It has also been submitted that the deceased Dina Nath, during his lifetime, moved an application for transfer of house in question in favour of the petitioner. He has referred to the letter dated 28.04.1988 (Annexure P-3), sent by the Chief Administrator, Housing Board, Haryana, Panchkula for completing the formalities but said formalities could not be completed and therefore, the house could not be transferred in favour of the petitioner and then he executed the Will.

7. I have heard the petitioner at length and perused the case file.
8. In Order 22 Rule 3(2), this Court has made the following amendment :-

“High Court Amendment - (Punjab, Haryana and Chandigarh) – For existing sub-rule (2) of rule 3, substitute the following :-

Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.”

9. Since there is an amendment made to Order 22 Rule 3 CPC, limitation period of 90 days would not be applicable. So, the learned Trial Court has rightly dismissed the petitioner’s application and has brought on

record the legal representatives of deceased/plaintiff no.1. The authorities cited by the petitioner in Balwant Singh (supra) and Mithailal Dalsangar Singh (supra) are not applicable to the facts of the case in hand.

10. It has been further submitted that the other points are not necessary for disposal of the instant revision petition as the suit has been filed claiming inheritance on the basis of natural succession and if any observation is made on merits of the case, then it may cause prejudice to any of the parties. However, the petitioner has further submitted that he is a senior citizen. The case was filed in the year 2016 and has not yet disposed of.

11. In view of what has been discussed above, I find no error in the impugned order dated 10.10.2022 passed by learned Trial Court so as to warrant interference by this Court. Accordingly, there is no merit in the present revision petition and the same is hereby dismissed. However, keeping in view the fact that the petitioner is a senior citizen and as per the directions issued by this Court from time to time, cases of senior citizens are taken up on priority basis, the Trial Court is directed to dispose of the case of the petitioner expeditiously and shall also ensure that no unnecessary adjournment is granted.

12. Pending applications, if any, shall stand disposed of along with this judgment.

November 06, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.