

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.123-2021 (O&M)

Date of Decision: 16.01.2023

Teresita Escandor

..... Petitioner

Versus

Dr. Upinder Hanspal and Others

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Anupam Bhardwaj, Advocate for the petitioner.

Mr. M.K. Bhatnagar, Advocate for respondent No.1.

Nidhi Gupta, J.

Prayer in the present Revision Petition is for setting aside order dated 06.01.2020 (Annexure P4) passed by learned trial Court whereby the application filed by the petitioner under Order 1 Rule 10 CPC (Annexure P2), for impleadment, in Civil Suit (Annexure P1) filed by the respondent No.1/plaintiff, has been dismissed.

Brief facts of the case are that the respondent No.1 herein, on the basis of alleged Will dated 11.06.2013 of the deceased Sh. Jasbir Singh, had filed a Civil Suit for declaration to the effect that the respondent No.1 is owner in possession of the property as described in the Headnote of the plaint, which is reproduced hereinbelow:-

“Suit for declaration to the effect that the plaintiff is owner in possession of house bearing plot No.60/A453, New Partap Nagar, G.T. Road, Amritsar as fully delineated in the siteplan attached with the plaint and as a consequential relief of permanent injunction inter-alia restraining the defendants, their associates, attorneys, privies, assignees, anti-social

elements from interfering/intermeddling into the peaceful and lawful possession of the plaintiff over the aforesaid property in any manner or mode whatsoever and further a decree for permanent injunction inter-alia restraining the defendants from alienating the suit property or any part thereof by way of sale, mortgage, gift, lease etc. etc. to anybody else and further restraining them from creating any charge over the property bearing No.60/A453, New Partap Nagar, G.T. Road, Asr.”

It is in this aforementioned Civil Suit that the petitioner filed an application for impleadment, which has been dismissed vide impugned order dated 06.01.2020. Hence, present Revision Petition.

It is submitted by learned counsel for the petitioner that the petitioner is the legally wedded wife of aforementioned late Sh. Jasbir Singh who was an NRI. It is submitted that respondent No.1/plaintiff is claiming ownership of the suit property on the basis of alleged Will dated 11.06.2013 of late Sh. Jasbir Singh and therefore, the petitioner, being wife of late Sh. Jasbir Singh is a necessary party to the said Civil Suit as her interests are involved in the said Civil Suit. In this regard learned counsel draws the attention of this Court to Annexure P2 which is the application of the petitioner under Order 1 Rule 10 CPC. It is further submitted that though the brother(s) of the deceased, and even their children, who have no right, title or interest in the suit property, have been arrayed as defendants in the above said suit by respondent No. 1/plaintiff, however, the petitioner has not been impleaded even though she is the only legal heir of the late Sh. Jasbir Singh being the legally wedded wife of the deceased. It is submitted that therefore, the learned Court below is in patent error in dismissing the petitioner's application for impleadment.

In response, learned counsel for respondent No.1 is unable to dispute the above facts. However, submits that the late Sh. Jasbir Singh was an NRI, and had expired in 2018, and had given his Power of Attorney to respondent No. 1.

I have heard learned counsel for the parties.

A perusal of impugned order shows that the learned Civil Judge (Junior Division), Amritsar has dismissed the petitioner's application under Order 1 Rule 10 CPC on following grounds:-

"However, in the present case, applicant Teresita Escandor seeks relief to implead her party in the present case as she was married with deceased Jasbir Singh Hanspal and plaintiff has concealed this fact. However, plaintiff in her reply denied the same. It was upon the applicant to place on record relevant documents if any for the factum of marriage prima facie however no document has been placed on record by applicant in order to prove the above said fact. As such, I find no ground to allow the present application and same is hereby dismissed." (Emphasis supplied)

However, a perusal of the application filed by the petitioner under Order 1 Rule 10 CPC (Annexure P2) shows that she had also placed on record certificate of her marriage with late Sh. Jasbir Singh. A perusal of the application dated 12.01.2019 filed by the petitioner under Order 1 Rule 10 CPC (Annexure P2) shows that it has been mentioned in Para 3 therein that *"copy of marriage certificate is being attached herewith for the kind perusal of this Hon'ble Court."* Said certificate shows the date of marriage of the petitioner with late Sh. Jasbir Singh as 17.01.2017, and date of registration of the marriage as 08.03.2017.

Learned counsel for the respondent No. 1 is unable to controvert any of the above said factual position.

Thus, from the above facts it is clear that the reasoning of the learned trial Court in dismissing the petitioner’s application under Order 1 Rule 10 CPC is contrary to the record and factually incorrect. Accordingly, present Revision Petition is allowed and impugned order dated 06.01.2020 is set aside. The application filed by the petitioner under Order 1 Rule 10 CPC is hereby allowed. Learned Civil Judge (Junior Division), Amritsar is directed to implead the petitioner as defendant in the above said Civil Suit i.e. CS-755/2018.

Pending application(s) if any also stand(s) disposed of.

16.01.2023	(Nidhi Gupta)
Sunena	Judge
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No