

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

CR-3464-2018(O&M)

Date of decision:-22.2.2023

Parminder Singh

...Petitioner

Versus

Harjinder Kaur and others

...Respondents

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

Present: Mr.Rajiv Joshi, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 11.5.2018 passed by the Court of Additional Civil Judge(Sr.Divn.), Phillaur in civil suit titled 'Harjinder Kaur Versus Bakhshish Singh and others' vide which an application filed by the revision petitioner Parminder Singh, who is defendant No.4 in the civil suit as well as legal representative of deceased defendant No.1 Bakhshish Singh, to file additional written statement being legal representation of Bakhshish Singh stood dismissed.

2. Briefly stated, the facts of the case are that plaintiff Harjinder Kaur wife of Rachhpal Singh, resident of VPO Boparai Kalan, Tehsil Nakodar, District Jalandhar, presently residing at a different place at Jalandhar, had brought a suit against defendants Bakhshish Singh, Darshan Kaur, Baksho Kaur, Parminder Singh (present petitioner) and others, seeking a declaration that there is joint Hindu family comprising of

the plaintiff along with defendants No.1 to 3 or in the alternative defendants No.1 to 7 are joint owners in possession of the property measuring 53 kanals 3 marlas now standing in the name of defendant No.1 Bakhshish Singh in the revenue record situated at village Bhardwazian, Tehsil Phillaur, District Jalandhar.

3. On getting notice, the defendants had appeared and filed written statements. Issues on merits were framed. The plaintiff had adduced her evidence. The case was fixed for evidence of the defendants. During the proceedings of that civil suit, defendant No.1 Bakhshish Singh had expired. On an application having been filed, Parminder Singh already impleaded as defendant No.4, was brought on record as legal representative of deceased defendant No.1 Bakhshish Singh. He through his attorney Major Singh had filed an application for being allowed to file written statement so as to include material facts with regard to execution of registered will dated 16.1.1987 as well as transfer deed dated 6.2.2017 said to have been executed by Bakhshish Singh in his favour with regard to the suit land.

4. That application was opposed by the plaintiff. It was dismissed by the trial Court of Addl.Civil Judge(Sr.Divn.), Phillaur vide the impugned order. For ready reference the operative part of the order is being reproduced as under:

5. *Perusal of the file reveals that defendant no.1 Bakhshish Singh has died during the pendency of the present suit. Thereafter, applicant moved an application u/O 22 Rule 4 and Section 151 of CPC for impleading legal heirs of defendant no.1, which was*

allowed by this Court, vide order dated 22.2.2018. By the said order, applicant namely, Parminder Singh was only allowed to join the proceedings of this case at that stage. The applicant is defendant no.4 in the present case and he has already filed his separate written statement. Therefore, there is no need to file any fresh written statement by the applicant. So no ground is made out to allow the present applicant to file the written statement on behalf of Parminder Singh, LR of defendant no.1 through his duly appointed attorney, namely, Major Singh, who has already filed written statement in the individual capacity. As such, the instant application for filing written statement on behalf of legal heir of defendant no.1 through attorney, namely Major Singh stands dismissed.

5. Such order left the applicant/defendant No.4 aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents. Though respondent No.1 was served but she did not put in appearance in the Court.

6. I have heard learned counsel for the petitioner besides going through the record and I find that there is absolutely no merit in the revision petition.

7. As has been observed by the trial Court in the impugned order, the revision petitioner, who has been impleaded as defendant No.4 in his individual capacity has already filed a separate written statement, as

such there is no ground to allow him to file a fresh written statement being legal representative of defendant No.1, when defendant No.1 Bakhshish Singh had also submitted his written statement while he was alive.

8. Learned counsel for the revision petitioner has referred to judgment i.e. **Sumtibai & Others Versus Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors., 2007(4) RCR(Civil)524** by the Apex Court and in support of his arguments that revision petitioner is entitled to file additional written statement to take up pleas available to him.

However, I find that this judgment is not applicable due to different facts and circumstances since as has been already observed supra the revision petitioner, who is defendant No.4 in the civil suit in his individual capacity, has already filed a written statement giving his version. Bakhshish Singh deceased defendant No.1, had also submitted written statement and now revision petitioner wants to get the question of inheritance of Bakhshish Singh decided in this suit in garb of filing additional/fresh written statement as legal representative of Bakhshish Singh, which can certainly be not allowed. The judgment Sumtibai & Others (supra) referred to by learned counsel for the revision petitioner is not applicable due to different facts and circumstances as well as context in which such observations had been made inasmuch as the legal representative of the deceased, defendant, who had been brought on record had not previously filed any such written statement in the independent capacity taking a particular stand. The dispute between the parties is with regard to nature of the suit land inasmuch as according to the plaintiff it has got nature of joint Hindu family property though it was

standing in the name of defendant No.1 Bakhshish Singh in the revenue record. In this litigation, the question of inheritance of Bakhshish Singh cannot be added for adjudication.

9. Learned counsel for the revision petitioner has also referred to judgment *Niranjan Sahu Versus Gauri Sahu and others, 2017(173) AIC 843*, which is also not applicable to the present case due to the different facts and circumstances.

10. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 23.5.2018 passed by this Court staying passing of final judgment by the trial Court stands withdrawn.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

22.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No