

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 6540 of 2018 (O&M)

Date of decision : 13.2.2023.

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Ram Sawarup @ Ram Sarup

.....Petitioner

vs.

Dharampal and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Neeraj Sheoran, Advocate for the petitioner.

Mr. R.V.S. Chugh, Advocate for the respondents.

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H. S. Madaan, J.

1. Feeling aggrieved by the order dated 7.9.2018, passed by Additional District Judge, Bhiwani, rejecting the application filed by Ram Sawarup @ Ram Sarup, for treating him as an indigent person, such Ram Sawarup @ Ram Sarup, has approached this court praying that the order under revision be set aside and he be permitted to file appeal as an indigent person.

2. Briefly stated, facts of the case are that, plaintiffs – Dharampal and others had brought a suit for grant of mandatory injunction against defendants Ram Sawarup @ Ram Sarup and others, challenging the registered sale deed No. 1796 dated 29.9.2009. The said suit was decreed by the court of Civil Judge (Senior Division), Bhiwani vide judgment and decree dated 8.1.2015 and defendant-revision petitioner had preferred an appeal against the

judgment and decree passed by the trial Court before District Judge, Bhiwani. That appeal was assigned to Additional District Judge, Bhiwani. The defendant had filed the appeal as an indigent person seeking permission to file the appeal without affixation of requisite court fee. Notice of that application was given to the respondents-plaintiffs, who resisted the application. Vide impugned order dated 7.9.2018, the application was dismissed by the learned Additional District Judge, Bhiwani, leaving the defendant revision petitioner aggrieved and he has filed the instant revision petition, notice of which was given to the respondent-plaintiffs, who have put in appearance.

3. I have heard learned counsel for the parties, besides going through the record.

4. According to learned counsel for the revision petitioner, he is a deaf and dumb person of 80 years and is not having any source of income; he is not possessed of any movable or immovable property and is living at the mercy of others, as such an indigent person; learned Additional District Judge, Bhiwani, has wrongly rejected his application, considering the fact that he has received Rs.28,80,000/- at the time of execution of the sale deed dated 29.9.2009, which was about 9 years earlier and this fact should not have been taken into consideration, while adjudicating the financial position of the revision petitioner, to see whether he was in a position to affix ad valorem court fee or not.

5. Whereas, learned counsel for the respondents-plaintiffs has contended that the revision petitioner – defendant is a man of

means and is possessed of sufficient resources to affix the requisite court fee and he is wrongly claiming himself to be an indigent person.

6. After considering the rival contentions and going through the record, I find that there is no merit in the revision petition. The order passed by the Additional District Judge, Bhiwani is quite detailed and well reasoned. The operative part of the order is being reproduced for ready reference :-

“ Now the question for determination is whether the appellant-applicant can be treated an indigent person. The execution of the sale deed is admitted by the appellant-applicant-defendant No.1 in the written statement and as per the sale deed, the appellant-applicant-defendant No.1 had received the amount of Rs.28,80,000/- from the plaintiffs at the time of execution of the sale deed, therefore, it cannot be said that the appellant-applicant-defendant No.1 is indigent person. Moreover, the appellant-applicant-defendant No. 1 has admitted that he was owner of one half share in the agricultural land measuring 40 Kanals, situated at village Chappar-Rangran and he has transferred this land in favour of his sons without any consideration. Keeping in view all facts and circumstances of the case, this

Court is of the considered opinion that the appellant-defendant No.1-applicant cannot be treated as indigent person and he is liable to affix the requisite court fee of Rs.1,10,830/- on the memorandum of appeal. Hence the instant application filed by the appellant-applicant-defendant No.1 is hereby dismissed.”

7. The revision petitioner – defendant having received a huge amount of Rs.28,80,000/- at the time of execution of the sale deed without explaining where he has spent this amount, cannot claim himself to be an indigent person, unable to pay the ad valorem court fee of Rs.1,10,830/-. Although, learned counsel for the revision petitioner has argued that in terms of Order 33 and 44 CPC, the Court should have conducted an enquiry about the financial capacity of the defendant to pay the court fee, but in my view, considering the facts and circumstances of the case and admitted receipt of Rs.28,80,000/- by defendant No.1 from the plaintiffs at the time of execution of the sale deed, no such enquiry was required to be conducted and prayer by defendant No.1 for treating him as an indigent person, was rightly rejected.

9. The revision petition is without an iota of merit and is dismissed accordingly.

13.2.2023
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No