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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7956-2016 (O&M)

Date of Decision: 02.05.2023

Surjit Kaur (now deceased) through LR. Lal Bahadur Singh

....Petitioner

Versus

Jaswant Kaur (now deceased) through LR's and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Yogesh Jangra, Advocate
for Mr. Sherry K. Singla, Advocate
for the petitioner.

None for respondents.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 26.08.2016 (Annexure P-10) passed by Ld. Additional District Judge, Patiala dismissing application filed by petitioner/defendant No.3 for transposition as appellant No.2 in Civil Appeal No.66-R, titled *Jaswant Kaur vs. Naranjan Singh & others*.

2. Succinct facts first, as pleaded in the revision.

2.1. Respondent No.1/plaintiff filed a suit for possession regarding land measuring 12 bigha in Dera Bassi, District Patiala. Petitioner was impleaded as proforma-defendant No.3 in the said suit being the plaintiff's sister. Plaintiff pleaded that petitioner/defendant No.3 got equal right with him and it was prayed that the possession of the suit land be given to them. Respondent No.2/defendant No.1 filed a written statement and pleaded adverse possession over suit land. Petitioner/defendant No.3 also filed a written statement and admitted the claim of

plaintiff. Ld. Trial Court framed issues arisen from the pleadings and dismissed the suit filed by respondent No.1/plaintiff vide judgment and decree dated 23.03.2005.

2.2. Respondent No.1/plaintiff then filed an appeal against the said judgment and decree. During the pendency of said appeal, the petitioner filed an application for her transposition as plaintiff/appellant No.2 in the said appeal on the ground that plaintiff and petitioner-defendant No.3 had got equal rights being daughters of Chetu Ram and got 1/2 share in the suit land. Since respondent No.1/plaintiff entered into the compromise with defendants No.1 and 2, she withdrew the said appeal and the appeal was ordered to be dismissed as withdrawn on 30.08.2006. Therefore, the petitioner/defendant No.3 filed an application for restoration of appeal since application filed by her was pending. Thereafter, the application for restoration of appeal was dismissed in default for want of prosecution. Petitioner again filed an application for reviving application for restoration of appeal and recalling of order dated 30.08.2006. Respondent No.2 contested the said application and the Ld. Court below vide order dated 15.03.2016 allowed the said application and the application for restoration of appeal was restored subject to costs of Rs.5000/-.

2.3. However, vide impugned order, the Ld. Court below dismissed the application filed by petitioner for transposition as appellant No.2 in appeal.

3. While issuing notice of motion, this Court passed the following order on 14.03.2018:-

“Heard.

Learned counsel for the petitioner contends that the suit for possession was filed by the plaintiff claiming relief for herself and defendant No. 3. The same was dismissed vide order dated 23.3.2005 (Annexure P-4) by learned Civil Judge (Junior Division), Rajpura. In the appeal, she has effected the compromise with defendants No. 1 and 2. Now defendant No.3 who has the same interest filed an application for transposing her as appellant. Said application has

been dismissed vide order dated 26.8.2016 by learned Additional District Judge, Patiala

*Learned counsel for the petitioner relies upon an authority of this Court decided in **Mauji Ram and another versus Ram Kali and others 2009 (4) Law Herald 2781**, to press that she can be transposed as plaintiff.*

Notice of motion for 3.8.2018.”

4. From perusal of the plaint (Annexure P-1), it transpires that the petitioner herein (defendant No.3 in the suit) had common interest with the plaintiff as joint owner which was specifically pleaded by the plaintiff herself who is her real sister. Impugned order is premised on following reasoning:-

“17. It is well settled that the court has power under sub-rule (2) Order 1 Rule 10 CPC to transfer a defendant to the category of plaintiffs and where the plaintiff agrees, such transposition should be readily made. This power could be exercised in appeal also to do complete justice between the parties. This principle was laid down by Hon'ble Privy Council in Bhupendra Narayan Sinha Bahadur v. Rajeswar Prosad Bhakat [AIR 1931 PC 162 : 58 IA 228].

18. Now reverting to the case in hand and as per record placed before me, it is duly established that initially the appellant and applicant/respondent no.3 got interest in the suit property being mortgagees. The appellant perfected her title being owner after she secured decree against State of Punjab and others and her name has been recorded as owner in the record of rights. While claiming her to be owner of suit property, she filed suit for possession, whereas the status of applicant/respondent no.3 remained as that of mortgagee and in these circumstances, she cannot be permitted to be transposed as appellant no.2 along with appellant Jaswant Kaur. Otherwise, the applicant/respondent no.3 is also not entitled to seek relief of recovery of mesne profits of previous period at this stage.

19. In the light of discussion made above, the application is misconceived and is dismissed accordingly. The appeal has already been dismissed as withdrawn by appellant Jaswant Kaur.”

5. In my opinion, the Ld. Appellate Court committed manifest error of law by holding that the defendant No.3 had not been able to show that she had perfected her title in the suit property and therefore she cannot be allowed to transpose as the appellant, having itself recorded that as per record it is established that initially the petitioner and plaintiff got interest in the suit property being

mortgagees. Reference may be had to judgment rendered by this Court in Mauji Ram’s case (supra), noticed by this Court while issuing notice of motion in the present case, as per which transposition can be allowed where parties have common interest and it would not , in any manner, act to the detriment of original plaintiff/appellant.

5. I am in respectful agreement with the view taken in Mauji Ram’s case (supra). None has appeared on behalf of respondents to counter the position stated above.

6. In the premise, revision is allowed and impugned order is set aside. Petitioner to appear before the Ld. First Appellate Court for pursuing her appeal after she is transposed as appellant and the Ld. First Appellate Court decide the appeal afresh after issuing notice to the respondents.

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

(ARUN MONGA)
JUDGE

May 02, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No