

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

CR-7606-2018 (O&M)

Reserved on :-29.11.2022

Date of Pronouncement: 08.02.2023

SUKHDEEP KAUR @ JASVIR KAUR

..... PETITIONER

VS

GURPAL SINGH AND ORS.

..... RESPONDENTS

CR-310-2019 (O&M)

DAYA SINGH

..... PETITIONER

VS

GURPAL SINGH AND ORS.

..... RESPONDENTS

CORAM :HON'BLE MR.JUSTICE ALOK JAIN

Present : Mr.P.K.S. Phoolka, Advocate
for the petitioner in CR-310-2019.

Mr. J.P.S. Chadha, Advocate
for the petitioner in CR-7606-2018.

Mr. S.D. Sharma, Senior Advocate with
Mr. Chirag Suri, Advocate for the respondents.

ALOK JAIN, J. (Oral)

The present two civil revision petitions arise out of identical facts and merits of the case. Hence, vide a common order, the above-said two revisions are being decided.

In CR No.7606 of 2018, learned counsel for the petitioner has argued that the claim of the petitioner Sukhdeep Kaur @ Jasveer Kaur is that she is daughter of late Gurbachan Singh and the learned Courts below did not adjudicate on the said issue, which it should have done by applying the provisions of Section 47 of CPC.

The brief facts of the case are that one Daya Singh filed a suit against Ram Kishan and his sons Gurbachan Singh and others, for possession by specific performance of the Agreement dated 10.06.1985 regarding land measuring 42 kanal 14 marlas detailed as under:-

“Khewat no.228, Khatouni No.320, Rect. No.50 Killa No.1/2/, 2/1 Rect. No.47, killa No.11/2/2, 12, 18, 19, 20/1, 21/2, 22/1, 23/1, 22/2/2, kill No.11 entered in Jamabandi for the year 1980-81 situated in the Revenue estate of village GhariTarkhana H.B. No.79, Tehsil Samrala, District Ludhiana”

During the pendency of the proceedings, Ram Kishan expired and his son Gurbachan Singh also expired on 19.01.2000 leaving behind Gurpal Singh and Gurmail Singh (real brothers of Gurbachan Singh) as legal heirs. For the purpose of impleadment of the LRs of Gurbachan Singh, an application was moved for impleading the defendant Nos.2 and 3 i.e. Gurpal Singh and Gurmail Singh as the LRs of Late Gurbachan Singh. In reply to the said application for impleadment, Daya Singh the original plaintiff in the suit, submitted that said Gurbachan Singh had left a widow as well as a daughter.

In the suit which was decreed, the appeal thereof was allowed and the only relief granted to the original plaintiff was recovery of R60,000/- along with interest @ 7% per annum. The Regular Second Appeal filed by Daya Singh came to be dismissed by this Hon’ble Court in RSA-1403-2012 on 03.03.2014. It would be pertinent to mention here that the SLP also came to be dismissed. The net effect of the same was that the original plaintiffs were held entitled to a sum of R60,000/- along with interest and Ram Kishan and his sons i.e. Gurbachan (since deceased), Gurpal and Gurmail

Singh were held entitled to restitution of the possession, which was given to the plaintiff Daya Ram, in execution of an ex-parte decree, which was subsequently set aside right up till the Hon'ble Supreme Court of India.

After the entire litigation was over and when the application for execution, for restitution of possession and permission to deposit the money as decreed under provisions of Order 21 Rule 2 CPC, was filed by Gurpal Singh and Gurmail Singh (after dismissal of SLP before the Supreme Court), the present petitioner Sukhdeep Kaur filed an application for impleading her as applicant being LR of deceased Gurbachan Singh son of Late Ram Kishan. This application was filed on 02.05.2015, in a litigation which lasted for two decades and more so, after 15 years of demise of Gurbachan Singh, who admittedly expired on 19.01.2000. The said application was replied by Gurpal Singh and Gurmail Singh, which led to the passing of the order dated 13.08.2018, wherein, the learned Court below dismissed the application by holding that the inheritance of Gurbachan Singh was not within the domain of the application under Order 21 Rule 2 of CPC. The said order was impugned and came to be challenged in CR-7606-2018.

Learned counsel for the petitioner in this Revision has relied upon the original birth certificate, annexed with CM-1844-C-2022 and also the Resolution dated 27.11.2015 passed by the Panchayat wherein the Panchayat had resolved, testifying that Sukhdeep Kaur is daughter of Gurbachan Singh @ Bachan Singh. The said Resolution was supported with the affidavits of the Panches dated 18.09.2017. However, the learned counsel for the petitioner has fairly stated that although the Resolution (Annexure P-10) was cancelled by the DDPO but that was only on the ground of lack of jurisdiction and the contents thereof were never rejected. He has further controverted the affidavit

filed by Avtar Singh, the Chowkidar, who was the custodian of the Register of Birth and Control in the village and submitted that the said affidavit could not have been relied upon by the Courts below. The second limb of his argument is that an application was moved by the respondents, Gurmail Singh and Gurpal Singh in the year 2009 in the suit filed by Daya Singh Vs. Ram Kishan through his LRs. In reply to the said application for impleading the LRs, the respondents concealed important facts viz., (i) the existence of a Will of 1999 and the fact that the said application was never decided by the Courts below; (ii) that there were two sisters also of Gurmail and Gurpal Singh, which fact was also concealed. Learned counsel for the petitioner fairly conceded that the only anomaly in his case is the delay on behalf of the petitioner to have approached the Court. He has further submitted that when an appeal was filed by Prithvi Pal Singh, deceased Gurbachan Singh had already been expired on 19.01.2000 but he still chose to implead Gurbachan Singh as respondent No.2.

On the strength of the above, he has submitted that Sukhdeep Kaur @ Jasveer Kaur is the Class-I legal heir of the deceased Gurbachan Singh and has vested right in the property of which restitution has been sought by the respondent.

The brief facts of the case leading to filing of CR No.310-2019 are that the original plaintiff Daya Singh filed an application (Annexure P-4) praying that the names of Gurpal Singh, Gurmail Singh and Prithvi Pal Singh be deleted from the array of decree-holders. The said application was filed in September, 2018. Learned Court below vide order dated 17.12.2018 (Annexure P-5), dismissed the same by holding as under:-

“After hearing both the parties and perusing the record, this Court is of the confirmed view that present applicant in hand deserves dismissal since the applicant firstly has not mentioned under which provisions of law present application has been moved by him for striking off the name of applicants from the array of applicants and his contention that present proceedings are execution proceedings is not correct as it is an application for restitution of possession. Further, perusal of record also reveals that vide order dated 06/05/2017 of ld. Predecessor court, said Hardeep Kaur and Jang Singh along with Prithivipal Singh are already impleaded as applicants/party in the present restitution proceedings. The present application is neither moved by the applicants (of main application) nor by Gurpal Singh, Gurmail Singh or Prithvipal Singh for being impleaded them unnecessarily. Therefore, the present application has no locus standie to file such application to strike off the names of the petitioners/applicants (of main application). As such the present application in hand stands dismissed with no order as to cost.”

Learned counsel for the petitioner herein has submitted that petitioner's application has been wrongly dismissed, whereby he had sought deletion of the names of Gurpal Singh, Gurmail Singh and Prithivi Pal Singh, for the reason that they had already sold the said property to Hardeep Kaur and others. He further submits that though he wants to execute the decree but

the same is not possible in the absence of the correct owners of the property and, therefore, submits that his application has been wrongly dismissed.

Per contra, Mr. S.D. Sharma, learned Senior counsel assisted by Mr. Chirag Suri, Advocate, for the respondents, has opened his argument by relying upon the maxim of Lord Mr. Justice Macmillan and Lord Mr. Justice Atkin to submit that “*Actus Curiae Neminum Gravabit*” which means we are more concerned with justice than we give the judgment. Learned Senior counsel has reiterated the facts that one Ram Kishan, who, as owner of the land measuring 42 kanal 14 marlas took a loan of R60,000/- from one Daya Singh who was a money lender. It is submitted that Daya Singh took thumb impressions on certain blank papers which were forged to create an Agreement to Sell dated 10.06.1985. On the basis of the said Agreement to Sell, a suit was filed by Daya Singh and since Daya Singh purposefully gave a wrong address, the said suit was decreed ex-parte, on 23.02.1989 and Daya Singh took possession in execution thereof. On coming to know of the ex-parte decree, an appeal was preferred and the said ex-parte decree was set aside and the matter was remanded on 30.07.2001.

The said suit was again decreed on merits on 15.09.2010, however, the said decree was set aside by the First Appellate Court on 18.02.2012 wherein it was held that Daya Singh was a money lender and, therefore, directions were issued to the sons of Ram Kishan (since he had expired during the pendency of the proceedings) to pay back the loan of R60,000/- along with interest @ 7% per annum. The Regular Second Appeal preferred by Daya Singh came to be dismissed by this Court on 03.03.2014 and the SLP also came to be dismissed on 06.05.2014.

Subsequent thereto, an application was moved by Gurpal Singh etc. seeking permission to deposit the amount of R60,000/- along with interest and for restitution of possession. It is pertinent to mention here that when the first appeal for setting aside the ex-parte decree was pending, Gurbachan Singh expired. However, the first appeal was allowed and remanded for *de novo* trial, i.e. to say, when the suit was pending for re-adjudication before the learned Trial Court, Gurbachan Singh expired and an application for impleading the LRs was filed by Gurpal Singh etc. wherein it was stated that Gurbachan Singh was neither married, nor had any issues. In reply to this application, the petitioner/judgment debtor vaguely raised objections and subsequently, petitioner/judgment debtor filed an application (Annexure P-4) for striking off the names of the respondents/decreed holders from the decree by stating that the said Decree Holder-Gurpal Singh, Gurmail Singh and Prithvi Pal Singh had sold out the land to Hardeep Kaur. The said application came to be dismissed vide impugned order dated 17.12.2018 (Annexure P-5) which was challenged and CR-310-2019 came to be filed.

Learned Senior counsel for the respondents has opened his arguments that as regards the counter to the assertions by the petitioner, he has submitted that the non-disclosure of the Will cannot be fatal for the reason that the Will is a secret document. Daya Singh was never a beneficiary of the said Will and had no concern and, therefore, there was no occasion for him to have disclosed the Will. The Will was executed by Gurbachan Singh in favour of Gurpal Singh and Gurmail Singh, as these two brothers were serving him. On merits, he has submitted that the entire story of the petitioner [in CR-7606-2018] is based on forged, fabricated and rather self-contradictory evidence. He has taken the Court through the Resolution and affidavits which

recorded that alleged Sukhdeep Kaur was born in the village GhariTarkhana, whereas, now the birth certificate produced records the place of birth as Samrala. He further contends that the impugned order clearly records that vide order dated 15.04.2015, the petitioner was granted liberty and direction to produce the original register of the Chowkidar on record but for more than 3 ½ years, nothing was done. He further relies upon the affidavit filed by the Chowkidar, Avtar Singh before the proceedings being undertaken by the SDM for the mutation to submit that Avtar Singh categorically stated that the pedigree table in which it was certified that a girl child to be heir of late Gurbachan Singh is wrong and in fact, Gurbachan Singh @ Bachan Singh was unmarried. He further submits that the Patwari, in connivance with others, has changed the pedigree table after my signatures and it categorically stated that **HarnamSingh S/o Daya Singh and Surinder Singh, Sarpanch** are pressurizing him to give a false testimony. Learned Senior counsel has further contended that even the Resolution passed by the Gram Panchayat has been set aside by the Competent Authority i.e. the Director, Village Development and Panchayat Department and he has emphasized, that the said order was passed after the consent of both the parties, which goes a long way to show that the petitioners have been manipulating the record by one way or the other. He further submits that in fact, the petitioner has been planted by Daya Singh only to delay the restitution of possession of the said property. He further submitted that under Section 47 of the CPC, the Executing Court cannot go into the question of inheritance and moreso, the petitioner has already filed a separate suit on **08.01.2016**. The Executing Court can only remain within the domain of the decree to be executed and Section 47 of CPC does not permit such kind of adjudication by the Executing Court.

To summarize, he has submitted:-

- (i) The application for impleading them as LR's filed in the year 2009 in the suit filed by Daya Singh was not decided but the same has lost its relevance for the reason that the said suit has been tested up till Hon'ble the Supreme Court by even filing the curative petitions. The said Daya Singh has never raised any objection with regard to the same.
- (ii) He submits that the birth certificate is suspicious as the place of birth does not match with any other supportive document.
- (iii) He further contends that the mother of the petitioner has never come forward to substantiate the claim of the petitioner.
- (iv) As regards the testimony of Chowkidar, he submits that it was upon the petitioner to have complied with the order dated 15.04.2015, but the petitioner chose to remain silent for 3 ½ years and moreso, the said Chowkidar has deposed to the contrary before the SDM.

To rebut the arguments of learned Senior counsel for the respondents, learned counsel for the petitioner has reiterated his arguments and has relied upon the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No.18278 of 2017*** decided on 21.10.2021. Learned counsel for the petitioner has also relied upon the judgment passed by Himachal Pradesh High Court in the case of **Sh.Parveen Kumar and Ors. Vs. Sh. Chaudhary Ram and Ors.** and the judgment of Allahabad High Court in the case of **Krishan Lal Barwa vs.Sharda Saharan and Anr.**, to substantiate his argument that the Courts below had to adjudicate on the issue by virtue of Section 47 of CPC.

No other points was raised and argued by the learned counsel for the parties.

Having heard the counsel for the parties, and perusing the record, the present petition deserves to be dismissed. The revision petition filed by Sukhdeep Kaur is per se not maintainable as she has failed to establish by any cogent proof as to her right. The best evidence available with her was the testimony of the mother but the same is missing. Moreso, Sukhdeep Kaur had to establish her identity by standing on her own legs but instead of instituting her own claim, she simplicitor filed an application only to derail the restitution of the possession and at the behest of Daya Singh. The alleged Sukhdeep Kaur admits to have born on 02.09.1977 but chose to remain silent right up till the year 2015 i.e. approximately 37-38 years. It is only when the land measuring 42 kanal 14 marlas was sought to be restored to Gurpal Singh and Gurmail Singh, the said application was propounded. Sukhdeep Kaur had independent right only if it could have been proved to the hilt that she is daughter of Gurbachan Singh but the same has not been done even till date. The intention of the petitioner smells *malafide* and does not inspire confidence. The learned Court below has rightly held that the application for impleadment in an application under Order 21 Rule 2 of CPC could not have decided the question of inheritance of Gurbachan Singh and had rightly held that there was no need to implead her as a necessary party. This Court finds no infirmity in the order passed by the Court below rather the petitioner could have filed a separate suit claiming her right in entirety if her intents were *bonafide* against all the assets and liabilities of her alleged father Gurbachan Singh.

In light of the above, CR-7606-218, deserves to be dismissed.

As regards CR-310-2019, the same also deserves to be dismissed being devoid of any merit. The judgment debtor is not in a position to dictate terms over the decree-holder. The order passed by the First Appellate Court setting aside the judgment and decree passed in the suit filed by the petitioner-plaintiff on 18.02.2012 clearly stated that the petitioner is entitled to R60,000/- with interest and as a necessary consequence, the possession taken by the petitioner by virtue of an ex-parte decree dated 23.02.1989 which was set aside vide order dated 30.07.2001 had to be restored. It was not open to the petitioner to take any benefit of any deal between, Gurpal Singh etc. with Hardeep Kaur. In case Hardeep Kaur was affected, she would have her independent right to approach the Court. The petitioner/judgment debtor has no *locus standi* to seek non-compliance of the decree on the pretext that the respondent/decreed holder had sold the said property to somebody else. Be that as it may, it has been demonstrated that Hardeep Kaur and Jang Singh along with Prithvi Pal Singh are already impleaded as applicants party in the proceedings for restitution of the possession vide order dated 06.05.2017 and the petitioner has no locus to file the same.

Accordingly, there is no infirmity or illegality in the orders passed by the Courts below, whereby the application for deletion of name of the respondents/decreed holders has been rightly dismissed.

In light of the above, the present petition also deserves to be dismissed.

Ordered accordingly.

(ALOK JAIN)
JUDGE

08.02.2023
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Whether speaking/reasoned : Yes

Whether Reportable: Yes