

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

CR-1216-2023(O&M)

Date of decision:-23.2.2023

Jaswinder Kaur

...Petitioner

Versus

Malak Singh (deceased) through his LR's and others

...Respondents

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

Present: Mr.Ajay Jain, Advocate
for the petitioner.

Mr.Sanjiv Gupta, Advocate
for the caveators/respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Malak Singh(since deceased) now represented by his LR's as well as Pritam Kaur had brought a suit against defendants Harmahinder Singh, Amarpal Singh sons of Dharam Singh as well as Mohinder Singh, seeking a declaration that plaintiffs continued to be owners in joint possession of the land.

2. Notice of the suit was given to defendants. Defendant No.2 Amarpal Singh had not appeared despite service, as such was proceeded against ex-parte. Subsequently when the civil suit was at the final stage of arguments, he moved an application for setting aside of ex-parte order and proceedings, which was contested by the plaintiffs. His such application was dismissed by the trial Court. He had approached this Court by way of filing CR No.3365 of 2018, which was disposed of vide order dated 14.12.2022, copy of order being Annexure P2. It has been observed in the

order that after arguing for some time counsel for the revisionist stated that he would be satisfied, if the revision petitioner Amarpal Singh was permitted to participate in the final arguments through counsel so as to point out the infirmities in the case of the plaintiff. The request was not opposed by learned counsel appearing for the respondent No.2. Accordingly, the revision petition was disposed of with the observations that revision petitioner through counsel would be heard by the trial Court during course of final arguments and his counsel may point out infirmities and weaknesses in the case of plaintiff at that time.

3. Subsequently, Ms.Jaswinder Kaur wife of Amarpal Singh had filed an application under Order 1 Rule 10 CPC in the trial Court for impleading her as a party submitting that her husband had executed a registered release deed No.2975 dated 29.12.2020 with regard to his land measuring 126 kanals 0 marla including the suit land in favour of the applicant Jaswinder Kaur; a mutation has been sanctioned in favour of the applicant on the basis of that release deed on 28.1.2021; now the applicant is in possession of that land at the spot; khasra girdawaries are also in her name, therefore plaintiffs and defendants have nothing to do with the suit land but in garb of the suit, they are bent upon dispossessing the applicant from the suit property, to which they have no right, in that way, the applicant is necessary party to be impleaded in the suit.

4. That application was resisted by the plaintiffs.

5. Vide the impugned order dated 17.2.2023, the application was dismissed, leaving the applicant aggrieved and she has approached this Court by way of filing the present revision petition.

6. A caveat petition has also been filed on behalf of the respondents.

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

8. Defendant Amarpal Singh, who had been proceeded against ex-parte in the trial Court and whose application for setting aside of ex-parte order and proceedings had been rejected by the trial Court had approached this Court by way of filing a revision petition in this Court , where in view of statement made by his counsel, he had simply been allowed for the limited purpose to join the proceedings at the stage of arguments through his counsel, who could point out the infirmities/weaknesses in case of the plaintiff. The order was passed on 14.12.2022. Now his wife Jaswinder Kaur is claiming that her husband Amarpal Singh had in fact executed a registered release deed No.2975 dated 29.12.2020, however, Amarpal Singh had filed the revision petition, which had been disposed of on 14.12.2022. In that revision petition, he did not utter even a single word regarding his having executed any registered release deed in favour of his wife. If it was so, then he had no right to file the revision petition after execution of release deed, he could very well have informed the Court that he no longer had any interest in the suit land but even after execution of the release deed, he continued pursuing the matter. That clearly shows collusion between husband and wife to prolong the proceedings and their *mala fide* intention in doing so. As the trial Court has rightly observed, this release deed is clearly hit by

principle of *lis pendens*. Jaswinder Kaur cannot have any independent right different from that Amarpal Singh, rather she is to sink and swim with him. With her husband Amarpal Singh being there on the record as defendant, there is no question of Jaswinder Kaur being impleaded as a defendant in her independent capacity.

9. Although learned counsel for the revision petitioner has tried to built up a case that applicant is assignee of her husband, therefore she has got a right to be brought on record under Order 22 Rule 10 CPC, but I do not find any merit in such plea now put forward by learned counsel for the revision petitioner. As the things stand, the application so filed by the applicant was under Order 1 Rule 10 CPC. That was rightly rejected by the trial Court finding that she was not a necessary party for just decision of the case since her husband the original defendant was already there before the Court. The story of assignment of interest by Amarpal Singh in favour of his wife Jaswinder Kaur during pendency of the suit and applicant requesting the Court to be brought on record as a assignee was neither pleaded before the trial Court nor such assignment comes out to be there. Even otherwise, the transfer is hit by principle of *lis pendens* and as observed above, it is a collusive act on the part the applicant and her husband so as to delay or deny passing of any decree in favour of the plaintiffs.

10. Learned counsel for the revision petitioners has referred to various authorities i.e. *Inderjeet Wadhwa Versus Jagjit and another, 2005(2) RCR(Civil)316, Jagdish Chander & another Versus Om Piari & others, 2008(4) RCR(Civil)56* and *Pipal Singh Versus Anokh Singh and*

others, 2012(5) RCR(Civil) 252.

11. Learned counsel for the respondents/caveator has vehemently defended the impugned order praying for dismissal of the revision petition. He has also referred to authorities i.e. **Balwant Singh Versus Buta Ram & Ors., 2010(7) RCR(Civil)2033, Usha Sinha Versus Dina Ram and others, 2008(3) RCR(Civil) 145** and **Mittar Singh and another Versus Bhajan Singh and others, 2012(5) RCR(Civil)630.**

12. The authorities referred to by learned counsel for the revision petitioner are not applicable to the present case due to different facts and circumstances of the case and the context in which such observations had been made.

13. The impugned order passed by the trial Court is quite detailed and well reasoned passed in light of the rules and regulations on the subject 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.

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

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

23.2.2023

(H.S.MADAAN)

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JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No