

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

CR-4077-2022(O&M)

Date of decision:-9.1.2023

Amar Singh (now deceased) through his legal heirs and another

...Petitioners

Versus

Amar Singh and others

...Respondents

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

Present: Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate
for the petitioners.

H.S. MADAAN, J.

1. In a suit for grant of permanent injunction filed by plaintiff Amar Singh and others on 6.4.2016, notice thereof was given to defendants, who had put in appearance through counsel. The defendants had filed written statement contesting the suit. Issues on merits were framed. The plaintiff had led their evidence. When the examination-in-chief of two witnesses on behalf of the defendants was recorded and case was fixed for their cross-examination, then the defendants filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint contending that defendant No.1 Amar Singh son of Tikka Ram had expired about 12 years prior to filing of the suit and as per the heading of the plaint, he had been sued through legal heirs, in that way, the defendant No.1 was not alive on the date of institution of suit; as per para No.9 of the plaint, a composite cause of action against both the defendants has

been pleaded that they came on the spot on 1.4.2016 and tried to interfere with possession of the plaintiffs, which is not possible because a dead person cannot invade or threaten possession of the others' property, in that way no cause of action arose to the plaintiffs against defendant No.1 (deceased defendant) or against his legal representatives and cause of action, if any, against defendant No.2 also does not survive. Therefore, the plaint is liable to be rejected and the suit is not maintainable.

2. The application was opposed by the plaintiffs contending that it is highly belated and has been filed with ulterior motive to delay the proceedings. Amar Singh had been sued through legal representatives from the very beginning and the application in question deserves to be dismissed.

3. After hearing arguments, the trial Court vide impugned order dated 1.8.2022 dismissed the application leaving the defendants aggrieved and they have approached this Court by way of filing a revision petition.

6. I have heard learned counsel for the revision petitioners besides going through the record and I find that the revision petition is absolutely without merit.

7. With the suit having been filed on 6.4.2016 and defendants putting in appearance filing written statement contesting the suit; issues on merits having been framed with plaintiffs concluding their evidence and defendants also availing of a few opportunities for that purpose examining two witnesses, whose cross-examination is yet to be conducted, all of sudden the defendants swung into action and filed the application under reference on 6.3.2020 i.e. after about 4 years of filing of

the suit. The application was rightly rejected by the trial Court observing that in the plaint the plaintiffs have claimed their ownership and possession over the suit property, whereas these facts are being denied by the defendants claiming their own ownership and possession, therefore, it cannot be said that the plaint does not disclose any cause of action and furthermore for adjudication of controversy between the parties evidence adduced by them has to be considered. Therefore, the plaint cannot be rejected at this stage.

8. I find that the order is quite detailed and well reasoned and can certainly be not termed to be perverse or suffering from any element of arbitrariness. 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.

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

9.1.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No