

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

CR-3710-2022 (O&M)

Date of decision: January 12, 2023

Harwinder Singh

....Petitioner

versus

Sukhwinder Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Prateek Sodhi, Advocate,
For the petitioner.

Mr. Namish Sodhi, Advocate,
For respondent No.2/defendant.

ARUN MONGA, J. (ORAL)

Revision petition is directed against an order dated 19.04.2022 (Annexure P-5) passed by Additional Civil Judge (Senior Division), Amritsar, whereby application under Order 1 Rule 10 (2) CPC filed by petitioner/intervener to substitute him as plaintiff in Civil Suit No.5420 of 2018 for possession and permanent injunction, was dismissed.

2. Brief facts as pleaded in the petition. Respondent No.1 herein, who is real brother of the petitioner, has preferred a civil suit against respondent No.2 on 01.06.2018 *inter alia* stating that he is exclusive legal and lawful owner in possession of one property where a shop is being run having a total area of 19.84 square yards, situated in area Tung Pain Sub Urban, Abadi New Jawahar Nagar, Batala Road, Tehsil and district Amritsar.

Respondent No.1 is stated to have purchased the property in question vide sale deed dated 05.07.1997. There is a common passage going from the

backside of the main property and from such passage, a stair house goes towards the first floor of the building wherein shop is located. However, at the backside of the property in question, respondent No.1 is running his business and has kept a godown under the name and style of M/s Lucky Knitters. Apparently, respondent No.2 had no right, title or interest with roof area of the property in question. Notwithstanding, respondent no.2 by use of force has wrongly occupied roof area/first floor since November-2015. Ever since, respondent No.1 had been requesting respondent No.2 to hand over the possession of the said area, but to no avail. Hence, the civil suit.

2.1 After framing of issues, suit is now fixed for plaintiff evidence. Unfortunately, respondent No.1 died on 13.04.2021. Petitioner herein is real brother of respondent No.1. He preferred an application that he may be allowed to be transposed as plaintiff in the said suit on the basis of Transfer Deed dated 01.04.2019, executed in his favour qua the shop. But his application has been dismissed vide impugned order.

3. Learned counsel for the petitioner submits that application for substitution as plaintiff has been wrongly rejected by learned trial Court since petitioner is in possession of the property on the basis of Transfer Deed dated 01.04.2019.

4. On the other hand, learned counsel for respondent No.2/defendant opposes the present revision petition on the ground that the application was non-maintainable before the trial Court and time barred. Neither the factum of execution of Transfer Deed dated 01.04.2019 by respondent No.1-Sukhwinder Singh in his favour nor death of Sukhwinder Singh on 13.04.2021 was brought to the notice of learned trial Court by the

applicant either in the civil suit or in the connected litigation pending in another Court.

5. Having heard the rival contentions, without commenting on the merits of the case, the instant revision petition is allowed subject to petitioner obtaining a 'No Objection Certificate' from the Legal heirs/Representatives of the deceased-plaintiff *qua* whom he is seeking substitution as plaintiff, pursuant to registered Transfer Deed dated 01.04.2019 (Annexure P-2), vide which deceased is stated to have relinquished his property in favour of the petitioner, who is his real brother.

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

(ARUN MONGA)
JUDGE

January 12, 2023

Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No