

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CR-5730-2022 (O&M)
Reserved on: 12.05.2023
Date of pronouncement: 18.05.2023

Krishna Devi
Versus
Pooja and another

...Petitioner
...Respondents

(2) CR-4667-2022 (O&M)

Krishna Devi
Versus
Harminder Singh and others

...Petitioner
...Respondents

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

Present: Ms. Samina Dhir, Legal Aid Counsel
for the petitioner in CR-5730-2022.

Mr. Sapan Dhir, Legal Aid Counsel
for the petitioner in CR-4667-2022.

Mr. Naresh Gopal Sharma, Advocate for respondent No.1
in CR-5730-2022 and for respondent No.4
in CR-4667-2022.

Mr. S.K. Liberhan, Advocate for respondent No.2
in CR-4667-2022.

H.S. MADAAN, J.

By this judgment, I intend to dispose of above mentioned
revision petitions having almost identical facts.

2. Under challenge in this revision petitions are order dated 01.11.2022 passed by Addl. District Judge, Kaithal vide which the application filed by revision petitioner Krishna Devi for restoration of the appeal had been dismissed. Another order dated 28.10.2016 passed by Addl. District Judge, Kaithal in that very civil appeal dismissing it in default on account of want of prosecution has also been challenged. Whereas, in CR-4667-2022, order dated 29.08.2016 has been challenged, whereby the application filed by Krishna Devi seeking permission to file the appeal as an indigent person was dismissed.

3. Briefly stated facts of the case are that plaintiffs Harminder Singh and Vijay Kumar had brought a suit against defendants Nar Singh, Krishna Devi and others whereas Pooja and another had filed another suit against defendant Krishna Devi with Nar Singh being impleaded as proforma defendant. Two civil suits were consolidated by the trial Court of Civil Judge (Sr. Divn.) Kaithal. Those were decided, vide a single judgment dated 18.10.2014 inasmuch as suit titled Harminder Singh etc. Vs. Nar Singh etc., was decreed and a decree for possession by way of specific performance of agreement to sell dated 09.01.2009 was passed in favour of the plaintiffs and against defendants No.1, 2, 4 and 5 as defendant No.1 had died during pendency of the suit; defendants No.4 and 5 being owners of the plot in question were directed to get the sale deed qua plot in question executed in favour of the plaintiffs within a period of three months from the date of judgment after receiving the balance sale

consideration amount from the plaintiffs, failing which the plaintiffs shall be entitled to get the sale deed qua the plot in question executed and registered through the process of the Court. Defendant No.2 Krishna Devi was directed to hand over vacant possession of the plot in question to the plaintiffs after execution of sale deed in their favour within a period of one month from the date of execution and registration of the sale deed in favour of the plaintiffs. The other suit titled as 'Pooja Devi etc. Vs. Krishna Devi etc.', was decreed and a decree for declaration was passed in favour of the plaintiffs and against defendant No.1 Krishna Devi to the effect that plaintiffs being class-1 heirs of deceased Banti Devi are owners of the plot in question and Will dated 15.01.2009 allegedly executed by deceased Banti Devi in favour of defendant No.2 Krishna Devi does not transfer the ownership right qua the plot in question.

4. Krishna Devi had preferred an appeal against the judgment and decree passed by the trial Court on 04.11.2014. Since there was no representation on behalf of the appellant in the Court of Addl. District Judge, Kaithal, vide order dated 28.10.2016, observing that none had appeared on behalf of the appellant for making good the deficiency of Court fee and further wait was not justified, the appeal was dismissed for want of prosecution.

5. Subsequently, appellant Krishna Devi moved an application under Order 9 Rule 13 CPC for restoration of the appeal.

The provision given in the application was firstly correctly under Order

9 Rule 8 CPC and then application was allowed, vide order dated 26.09.2022, subject to payment of Rs.2000/- as costs. Again the appellant was asked to pay the requisite Court fee. On the adjourned date i.e. 01.11.2022, the appellant was asked to pay costs of Rs.2000/- and affix the requisite fee. The cost had been paid but it was found that the Court fee had not been affixed as had been directed vide order dated 29.07.2016, observing that the appeal had been dismissed in default, vide order dated 28.10.2016 for not making the good deficiency of Court fee and even in the last order dated 26.09.2022, it was specifically directed that in case the Court fee was not deposited, the application for restoration of civil appeal shall be deemed to be dismissed. The application for restoration of civil appeal was rejected, vide order dated 01.11.2022.

6. After hearing learned counsel for the parties and going through the record, I do not find anything wrong with the impugned orders. The appellant not complying with the directions issued by the Court repeatedly with regard to affixation of ad-valorem Court fee, the Court was not left with any other option but to pass such orders. There is no element of arbitrariness or perversity in such orders. The revision petitions are found to be without merit and are dismissed accordingly.

18.05.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No