

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

111

CR No.5973 of 2022

Date of Decision: 04.01.2023

Balwinder Kaur

...Petitioner

Versus

Jaspal Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Abhay Gupta, Advocate
for the revisionist-petitioner.

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MEENAKSHI I. MEHTA, J. (Oral)

By way of the instant revision petition, the revisionist-petitioner/applicant (here-in-after to be referred as 'the applicant') has laid challenge to the order dated 26.09.2022 (Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Samrala (for short 'the trial Court'), whereby the application (Annexure P-6) moved by her under Order 1 Rule 10 read with Section 151 CPC for being impleaded as a party in Civil Suit No.1296 of 2013, has been dismissed.

2. As per the brief factual-matrix culminating in the filing of the present revision petition, respondents No.1 and 2-plaintiffs (here-in-after to be referred as 'the plaintiffs') filed the above-said Civil Suit against respondents No.3 to 5-defendants (for short 'the defendants') for seeking a decree for declaration to the effect that the Agreement of Assignment dated

27.01.2010, as allegedly executed by defendant No.1 in favour of defendants No.2 and 3 on the basis of the judgment and decree dated 11.08.2009 passed by this Court in Regular Second Appeal (RSA) No.1118 of 1999, is illegal, null and void and they (plaintiffs) also sought the joint possession of the suit property to the extent of 2/3rd share in the same. The applicant moved application Annexure P-6, while averring that she has become the owner of the suit property by virtue of the Will executed by her brother Gursharan Singh in her favour on 30.10.2001 and the same has been dismissed by the trial Court vide the impugned order.

3. I have heard learned counsel for the revisionist-petitioner/applicant in this revision petition, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for the applicant contends that the afore-named testator had bequeathed the property, which is the subject matter of the said Civil Suit, to the applicant by executing the above-mentioned Will in her favour and thus, she, being the owner of the suit property, is a necessary party to the Suit but vide the impugned order, the trial Court has erroneously dismissed the application under reference, without properly appreciating these facts and therefore, the said order is not legally sustainable and hence, the same deserves to be set-aside.

5. However, the afore-raised contentions are devoid of any merit because the plaintiffs have filed the above-said Civil Suit to challenge the validity and legality of the afore-mentioned Agreement of Assignment and they have not sought/claimed any relief therein against the applicant.

Further, concededly, the applicant was neither a party to the said Agreement nor in the above-said RSA as decided by this Court. She has not come forward with any fair, candid and plausible ground/explanation for her not having ever taken the necessary steps to be impleaded as the party in the Suit, out of which the said RSA had arisen, for the reasons best known to her. Even otherwise, defendants No.2 and 3 in the Civil Suit, filed by the plaintiffs, are none other than her (applicant's) own sons. To add to it, the plaintiffs, being the *dominus litis*, have the right to decide as to against whom they intend to seek the relief. To cap it all, the applicant, admittedly, has already filed a separate Civil Suit for staking her claim in the suit property on the basis of the afore-referred Will, which is pending before the Court of competent jurisdiction for its trial and adjudication. In such circumstances, the applicant cannot be considered to be a necessary party to the Suit filed by the plaintiffs.

6. In view of the fore-going discussion, this Court is of the considered opinion that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

04.01.2023
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(MEENAKSHI I. MEHTA)
JUDGE

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