

CR-68-2018 (O&M)

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2024:PHHC:047891

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-68-2018 (O&M)

Date of decision: 08.04.2024

Beer Inder Singh

....Petitioner

Versus

Hameer Kaur (deceased) through her LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Manjit Singh Uppal, Advocate for the petitioner
Mr.R.K.Singla, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. Brief facts of the case:-

1.1 In this revision petition, the defendants assail the correctness of the order dated 15 September, 2017 and 18 September, 2017 passed by the trial court while allowing the plaintiff to withdraw the suit with permission to file a fresh one.

1.2 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

1.3 Sh.Santa Singh was the common ancestor of the parties. He died on 8th September, 1965 leaving behind three sons namely Sh.Chanan Singh, Sh.Pritam Singh and Sh.Sajjan Singh and three daughters namely Smt.Hamir Kaur, Smt. Nihal Kaur and Smt.Jeeto. The property left behind by Sh.Santa Singh was mutated in favour of three sons Sh.Chanan Singh, Sh.Pritam Singh and Sh.Sajjan Singh on the basis of the Will executed by Sh.Santa Singh on 1st August, 1964 in their favour. Sh.Chanan Singh, Sh.Pritam Singh and Sh.Sajjan Singh also died

and their property was inherited by Smt. Angrej Kaur widow of Sh.Sajjan Singh. Smt. Angrej Kaur died on 11th March, 2011. On 22nd November, 2011, Smt.Hamir Kaur daughter of Sh.Santa Singh filed a civil suit for grant of decree of joint possession that she is owner on the basis of natural succession to the extent of 2/3rd share in the property left behind by Sh.Santa Singh. She also challenged the Will dated 30th September, 2009 allegedly executed by Smt.Angrej Kaur in favour of Beer Inder Singh (defendant No.1)

1.4 The aforesaid suit remained pending before the trial court and both the parties completed their evidence. The plaintiff filed an application for amendment of the plaint in order to challenge the correctness of mutation No. 6078 on the deaths of Sh.Chanan Singh, Sh.Pritam Singh and Sh.Sajjan Singh. By this mutation, the record was upgraded and Smt.Angrej Kaur was reflected as the owner of the property left behind by Sh.Chanan Singh, Sh.Pritam Singh and Sh.Sajjan Singh. The aforesaid application was dismissed by the trial court, which in revision, was upheld by the High Court.

1.5 Subsequently, the plaintiff- Smt. Hamir Kaur filed an application under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for permission to withdraw the suit as she had failed to challenge mutation no.6078, which has been allowed by the trial court. The correctness of the said order has been challenged in this revision petition.

2. Arguments put forth by the learned counsel representing the parties:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2 Learned counsel representing the petitioner submits that the trial court has erred in allowing the application as the suit filed by the plaintiff did not suffer from any formal defect, which may have resulted in dismissal of the suit. He submits that the entire dispute between the parties is with respect to the property inherited by Sh.Chanan Singh, Sh.Pritam Singh and Sh.Sajjan Singh by virtue of the Will executed by their father on 01.08.1964.

2.3 Per contra, the learned counsel representing the respondent, while relying upon the judgment passed in **Vinod Kumar vs. Gurmail Singh and another 2012(1) RCR (Civil) 539** submits that once an application for permission to amend the plaint has been rejected, the respondent (the plaintiff) was left with no choice but to withdraw the suit.

3. Discussion by this Court:-

3.1 This Court has considered the submissions made by the learned counsel representing the parties and analyzed their arguments.

3.2 Order XXIII Rule 1 (3) CPC enables the court to permit the plaintiff to withdraw the suit on fulfilment of the following two prerequisites:-

i) the suit must fail by a reason of some formal defect;

ii) there are sufficient grounds for allowing the plaintiff to institute a fresh suit for subject matter of the suit or part of the claim.

3.3 In civil suits, a document can be challenged by virtue of Section 31 of the Specific Relief Act, 1963 (hereinafter referred to as '1963 Act'). If the document has been executed, the executant before avoiding the same is required to seek annulment thereof. This Section is applicable where there is a written instrument, which is required to be cancelled. In other cases, the plaintiff under Section 34 of the 1963 Act can file a suit for declaration if he is entitled to any legal character or to any right as to any property. The plaintiff Smt. Hamir Kaur is neither the executant of the mutation nor the mutation falls within the definition of written instrument executed by her. The plaintiff has already filed a suit for joint possession claiming her share in the property on the basis of natural succession after the death of Sh. Santa Singh. The aforesaid matter was pending in the court. Both the parties have led their evidence. In a suit filed by the plaintiff, it was not necessary to formally challenge mutation no.6078. The mutation is entered by the revenue authorities in order to upgrade the revenue record. This is a natural consequence of change of ownership either by way of any written instrument like sale deed, gift deed or on account of succession by virtue of natural succession or Will. Order XXIII Rule 1 (3) CPC provides that the court must be satisfied that the suit will fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to file a fresh suit on the same cause of action. Unless these two conditions are fulfilled, the suit should not be permitted to be withdrawn with permission to file a fresh one. Though in this case an application of the plaintiff, for permission to amend the plaint, has been dismissed,

however, it has already been found that a formal change to mutation no.6078 is not necessary.

3.4 The judgment relied upon by the learned counsel representing the respondent in **Vinod Kumar’s case (supra)** is not applicable to the peculiar facts of that case. Moreover, the suit was at the stage of final disposal after a prolonged trial of nearly 6 years.

4. Decision:-

4.1 In view of the aforesaid facts, the revision petition is allowed. The orders dated 15.09.2017 and 18.09.2017 are set aside and the suit filed by the plaintiff is restored to its original number. The parties through their counsels are directed to appear before the trial court on 08.05.2024.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

08.04.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE