

[253] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3314-2019 (O&M)
Date of Decision : 30.09.2024

Sarbjit Singh ...Petitioner

versus

Partap Singh and anotherRespondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Ranjit Saini, Advocate
for the petitioner.

Mr. Akshay Kumar Jindal, Advocate
for respondent No.1.

None for respondent No.2.

PANKAJ JAIN, J. (ORAL)

[1] Challenge is to order dated 07.03.2019 passed by the learned Civil Judge (Junior Division), Karnal, whereby, an application filed by respondent No.1-plaintiff under Order 33 Rule 1 read with Section 151 CPC treating him to be an indigent person has been allowed.

[2] Suit was filed by the plaintiff seeking declaration, joint possession and recovery of Rs.60,32,000/- including Rs.52,00,000/- as principal amount and Rs.8,32,000/- on account of interest, against the respondent.

[3] Counsel for the petitioner has referred to para No.5 of the plaint to submit that admittedly the plaintiff received Rs.6 lacs yet he has been declared to be an indigent person and his application under Order 33 Rule 1

read with Section 151 CPC has been wrongly allowed, merely, by relying upon the report furnished by the Tehsildar.

[4] *Per contra*, Mr. Jindal, submits that in the report filed by the Tehsildar, it has come on record that the plaintiff along with his wife was hardly making both ends meet and were having no source of income apart from old age pension, which was being paid by State to them for their bare survival and thus no fault can be found with the order passed by the learned Trial Court.

[5] I have heard counsel for the parties and have carefully gone through the record of the case.

[6] On 30.11.2018, learned Trial Court sought report from Tehsildar, observing as under:-

“ *Ahlmad is directed to sent a letter to concerned Tehsildar for submitting the report “**Whether the plaintiff/Partap Singh aged 69 years, son of Gurdeep Singh, resident of house no.908, Banke Lal Market, Badarpur, New Delhi is an indigent person or not**” on the date fixed i.e. 30.11.2018.*”

[7] Report filed by the Tehsildar dated 18.01.2019 placed on record as Annexure P-7 reads as under:-

“*Sir,*

As per your order, I reached at H.No.908, Banke Lal Market Badarpur, New Delhi, where plaintiff Partap Singh and his wife Smt. Baljit Kaur informed along with two witness. Plaintiff Partap Singh aged 72 years and received old age pension. The property is in the name of Baljeet

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Kaur, whose GPA and WILL is enclosed herewith. Smt. Baljit Kaur herself and Partap Singh received old age pension. From whom income comes to Rs.4500/- and annual incomes to Rs.54000/-. They hardly makes both ends meet. Pension passbook is also enclosed. Repot is submitted for further action.”

[8] A bare perusal of the impugned order would reveal that apart from relying upon the conclusion of report of the Tehsildar, there is no semblance of application of mind at the hands of the concerned Court. Without expressing any opinion on merits of the case, this Court finds that at least the learned Trial Court ought to have applied its mind to the facts of the present case and then has come to his own conclusion apart from reproducing the conclusion arrived at by the Tehsildar.

[9] Consequently, the impugned order is set aside. Learned Trial Court is directed to decide the application afresh strictly in accordance with law. The Court is quite *sanguine* that the learned Trial Court shall keep in mind that though the report submitted by the Tehsildar is a cogent piece of evidence, but the Trial Court is not bound by the same and the order must show some application of mind.

[10] Revision petition stands **allowed**.

(PANKAJ JAIN)
JUDGE

30.09.2024

'R. Sharma'

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