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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-4722-2024

Date of decision : 30.09.2024

Avtar Singh (since deceased) through his LRs

... Petitioner

Versus

Lakha Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Ravish Bansal, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 15.04.2024 (Annexure P-3) passed by the Additional District Judge, Faridkot whereby an application dated 16.12.2019 (Annexure P-2) filed by the petitioner under Order 44 Rule 1 CPC for permission to file appeal as an indigent person has been dismissed.

2. Brief facts of the present case are that respondent no.1 had filed a suit against the petitioner (now represented through his legal representatives) for specific performance of agreement to sell dated 20.04.2015 and for permanent injunction with respect to land measuring 16 kanals 0 marlas situated within the revenue estate of Village Sandhwan, Tehsil and District Faridkot. The said suit was instituted in the year 2016

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and was decreed on 01.10.2019. A copy of the decree sheet has been annexed with the present petition as Annexure P-1. A perusal of the decree sheet would show that out of total sale consideration of Rs.31,40,000/-, an amount of Rs.22,70,000/- was already received by the petitioner (defendant) as earnest money at the time of execution of the agreement to sell and only the balance amount was to be paid and on receipt of the said balance amount, the sale deed was to be executed and the possession was to be delivered.

3. Against the said judgment and decree, an appeal was filed along with an application under Order 44 Rule 1 CPC for declaring the appellant as an indigent person. In the said application, it was stated that except the suit property, the petitioner did not have any other property and the fact that in addition to 16 kanals 0 marlas of land, which was the suit property, the petitioner was also the owner of 10 kanals of land, was not mentioned in the said application and even the value of the land measuring 10 kanals was not mentioned and thus, there was active concealment by the petitioner. By the time the said application was decided, the defendant-Avtar Singh had died and the said application was pursued by the LRs of Avtar Singh, who had inherited the above said land. The Ist Appellate Court had directed the LRs of Avtar Singh, i.e., Krishan Singh as well as Major Singh, to file affidavits alongwith the list of property and the bank statement but the said documents although produced before the Ist Appellate Court, have not been annexed along with the present petition. The Ist Appellate Court had observed that as per jamabandi for the year 2016-17 Ex. R1,

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which is already on record, it was apparent that the land of the said Avtar Singh was inherited by Major Singh and Krishan Singh vide mutation no.7607 and the entire land owned by Avtar Singh had been transferred to the said Major Singh and Krishan Singh and the said land was shown to be 'Nehri', i.e. the source of irrigation was a canal and small portions of the land were mentioned as 'Gair Mumkin Abadi'. It was further observed that the said Avtar Singh in view of the ownership of the land as well as the sons of Avtar Singh in view of the fact that they had inherited the said land, could not be stated to not having the capacity to pay the requisite court fee and in fact in the State of Punjab, the said land was found sufficient to come to a conclusion that the said Avtar Singh and further his legal representatives had the capacity to pay the requisite court fee and the application accordingly was dismissed and the case was adjourned to 13.05.2024 for affixing the requisite court fee. The zimni order dated 13.05.2024 and also the zimni orders passed on subsequent dates have not been annexed along with the present petition.

4. Learned counsel for the petitioner has submitted that a perusal of the jamabandi for the year 2016-17 (Annexure P-4) would show that Avtar Singh was the owner of $\frac{1}{2}$ share of land measuring 52 kanals 19 marlas and the suit land measuring 16 kanals 0 marlas is also out of the said property, inasmuch as, a perusal of the decree would show that khasra no.494, 496, 497 and 498 were also a part of the suit land and thus, non-giving of details of the balance land measuring 10 kanals approximately was not on account of any malafide reason. It is submitted that in fact the said

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Avtar Singh had even mortgaged the said 10 kanals of land for an amount of Rs.5 lacs and rapat no.491 was entered into with respect to the same and thus, neither Avtar Singh nor his LRs have sufficient means to pursue the present case and thus, they be permitted to pursue the present case as indigent persons. Learned counsel for the petitioner has relied upon the provisions of Order 44 Rule 1 CPC read with Order 33 Rule 1 CPC in support of his arguments.

5. This Court has heard the learned counsel for the petitioner and has perused the paper book and is of the opinion that the present petition being meritless, deserves to be dismissed and the impugned order dated 15.04.2024 deserves to be upheld.

6. A perusal of the provisions of Order XXXIII, moreso, a perusal of Rule 2 would show that in every application for permission to sue as an indigent person, the applicant is required to mention a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, which is also required to be annexed and the same is to be signed and verified in the manner prescribed for the signing and verification of pleadings. Rule 4 provides that the applicant can be examined. Rule 5 provides for rejection of an application in a situation where the application is not framed and presented in the manner prescribed by rules 2 and 3 and on other various grounds. The relevant portions of Rule 2 and 5 are reproduced hereinbelow:-

“ORDER XXXIII

[SUITS BY INDIGENT PERSONS]

xxx xxx xxx



*2. Contents of application.—Every application for permission to sue as an [indigent person] shall contain the particulars required in regard to plaints in suits: **a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.***

xxx xxx xxx

*5. Rejection of application.—The Court shall reject an application for permission to use as [an indigent person]—
(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or*

xxx xxx xxx”

7. The Order XLIV Rule 1 provides that any person who is entitled to prefer an appeal but is unable to pay the court fee for the memorandum of appeal, may present an application accompanied by a memorandum of appeal and the same may be allowed subject to the presentation of such application being in accordance with the provisions relating to suits by indigent person, so far as those provisions are applicable. Thus, by virtue of Order XLIV Rule 1 the provisions of Order XXXIII CPC are applicable in the case of appeal by indigent person.

8. In the present case, it could not be disputed before this Court that in addition to the suit property of 16 kanals 0 marlas, the petitioner and thereafter his legal representatives were the owners of 10 kanals of land over and above the suit land. A perusal of the application dated 16.12.2019 (Annexure P-2) would show that neither details of the said additional land measuring 10 kanals have been given in the said application nor the

estimated value of the same has been mentioned. Thus, there was active

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concealment. A perusal of the said application would further show that an affidavit in support of the said application was also attached but the said affidavit has not been annexed along with the present petition. The Ist Appellate Court after the death of Avtar Singh had directed Krishan Singh and Major Singh, sons of Avtar Singh, who were pursuing the application, to file their affidavits along with the list of property and the bank statement, however, even the said documents have not been annexed with the present petition although the same were filed before the Ist Appellate Court.

9. It is apparent that the fact that the petitioner and subsequently his LR's were owners of the additional land in addition to 16 kanals of land, which was the suit property, was found by the Ist Appellate Court on the basis of jamabandi for the year 2016-17. It was further found by the Ist Appellate Court that as per the jamabandi, the said land was 'Nehri' and thus, the application filed by the petitioner was not bonafide and was not in accordance with the provisions of law and deserves to be rejected on the said ground alone. In addition to the above, it has been rightly considered by the Ist Appellate Court that in the State of Punjab the said land holding is sufficient to hold that the petitioner had the capacity to pay the requisite court fee. Moreover, once the petitioner has chosen not to even give the details of property, which were apparent from the jamabandi itself, then, the bonafide of the petitioner is questionable, inasmuch as, there is every possibility that the petitioner and his LR's are owners of other properties also.

10. Even the plea raised by the learned counsel for the petitioner to

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the effect that the khasra numbers comprised in the suit property are all the same as that in the jamabandi for the year 2016-17 is partly incorrect, inasmuch as apart from the fact that the suit property is only 16 kanals 0 marlas and the share of the said Avtar Singh-petitioner and thereafter his LRs is 26 kanals 14.5 marlas, there are two khasra numbers, i.e., khasra nos.782 and 1030 which are not even part of the suit property. Even the said two khasra numbers have not been disclosed in the application. Moreover, the Ist Appellate Court has found that some portions of the property are in 'Gair Mumkin Abadi' and are thus more valuable. Even on merits, once the petitioner and his LRs are found to be the owners of more than 10 kanals of fertile land, which includes land in 'Abadi', then, it cannot be said that the petitioner or his legal representatives are indigent persons, moreso, in the absence of affidavits, which were produced by the legal representatives of the petitioner before the Ist Appellate Court.

11. Even the argument with respect to mortgaging of land measuring 10 kanals cannot be considered at this stage as neither any such averment was made in the application nor any argument on the said aspect had been raised before the Ist Appellate Court and the Ist Appellate Court was required to decide the application only on the basis of application, affidavits, list of property and the bank statement submitted by the petitioner/ his LRs. The conduct of the petitioner disentitles him from any relief from this Court and the impugned order being legal, deserves to be upheld.

12. Keeping in view the above said facts and circumstances, the



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impugned order dated 15.04.2024 is legal and deserves to be upheld and the present petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 30, 2024.
Davinder Kumar

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