
(2010) 01 P&H CK 0221
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4776 of 2009

Harvinder Singh and Others

APPELLANT

Vs

Avtar Singh and Others

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2010) 2 CivCC 259

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : S.S. Salar, for the Appellant; Deepak Aggarwal, for the Respondent No. 1, for the Respondent

Judgement

L.N. Mittal, J.—Respondent No. 1 - Avtar Singh filed suit against Harnek Singh for recovery of Rs.3,42,750/-, under Order 37 of the CPC (in short - CPC). However, Harnek Singh died and petitioners and proforma respondents No.2 to 4 herein were impleaded as legal representatives of Harnek Singh. Defendant's legal representatives filed application for leave to defend the suit. Learned Additional Civil Judge (Senior Division), Nabha, vide impugned order dated 21.07.2009 (Annexure P3), allowed the said application subject to furnishing of surety in the sum of Rs.5,00,000/ of immovable property.

2. I have heard learned counsel for the parties and perused the case file. Learned counsel for the petitioners vehemently contended that when a case for leave to defend was made out, the defendants could not be burdened with condition of furnishing of security. Reliance in support of this contention has been placed on a judgment in the case of Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation,

3. On the other hand, learned counsel for respondent No. 1-plaintiff contended that petitioners No.1 and 4, even during the pendency of the instant revision petition, have disposed of some of their immovable property and if security is not furnished, the decree, that may be passed in favour of plaintiff-respondent No.1,

would be defeated.

4. I have carefully considered the rival contentions. Even assuming for the sake of argument that condition of furnishing security could not be imposed for granting leave to defend the suit, even then the plaintiff-respondent No. 1 could seek attachment of defendants' property before judgment under Order 38 Rule 5 CPC. Conditions for the same are satisfied because petitioners No. 1 and 4 have already disposed of part of their property during pendency of the instant revision petition and petitioners are also not ready to furnish security as directed by the trial court.

5. In view of the aforesaid, the instant revision petition is disposed of by modifying the impugned order dated 21.07.2009 of the trial court and by directing attachment before judgment, of immovable property of the petitioners. The trial court shall effect the said attachment in accordance with Order 21 Rule 54 CPC. The petitioners shall furnish particulars of their immovable property before the trial court within one month from today and shall not alienate the said property during the pendency of the suit. Plaintiff-respondent No.1 shall also be at liberty to furnish details of immovable property of the petitioners before the trial court. Subject to attachment before judgment, of immovable property of the petitioners, leave to defend the suit is granted.