
(2013) 11 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : CR No. 6951 of 2013

Rajinder Kumar

APPELLANT

Vs

Bhushan Kumar Oberoi

RESPONDENT

Date of Decision : 15-11-2013

Acts Referred:

Citation : (2014) 2 PLR 441

Hon'ble Judges : Sat Paul Bangarh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. It is the case of the petitioners, that Shiv Kumar their father and defendants Nos. 5 to 7 before the trial Court were the owners of the suit property and after his death, the petitioners, herein, inherited the same alongwith other properties, which are situated even outside Ambala Cantt. After the death of Shiv Kumar, there had been a family arrangement between all the legal heirs and the same has been confined in the petition u/s 19 of the Legal Services Authority Act, 1987, bearing civil suit No. 469 dated 22.11.2011 decided on 08.12.2011 by the Permanent Lok Adalat, Ambala and after the passing of the award (supra), the petitioners came to know of the Will dated 14.07.2011 executed by Shiv Kumar in their favour. The property bearing House No. 4214, Dal Mandi, Ambala Cantt was also mutated in the name of the petitioners in the record of the Municipal Corporation, Ambala. As per Will dated 14.07.2011, it is the last testament document executed by Shiv Kumar and the petitioners, thereby, inherited the property in question. The last Will dated 14.07.2011 of Shiv Kumar-deceased, judgment and decree dated 08.12.2011 and mutation sanctioned in favour of the petitioners are in the knowledge of the respondents and all others.

2. The respondents Nos. 1 and 2 filed suit u/s 92 of the CPC seeking a decree for declaration, that the property bearing 4214, Dal Mandi, Ambala Cantt, that was earlier owned by late Shiv Kumar has now vested in the Trust known as Krishan Lal Revti Devi and Sons Trust", that according to them was created as per his

last Will dated 20.04.2009.

3. It was also pleaded that the scheme laid down in the trust deed is in possession of the defendants. It was, accordingly, prayed for grant of a decree for declaration for the property detailed (supra). No trust in the name of Krishan Lal Revti Sons Trusts or Krishan Lal Sevti Devi & Sons" exists or ever existed and the suit u/s 92 of the CPC of the respondents is not maintainable.

4. It is the case of the petitioners, that civil suit No. 3 of 08.02.2013 filed by the respondents Nos. 1 and 2, herein, before the trial Court against them and respondents Nos. 3 to 6, is not maintainable. Alongwith the suit, the respondents Nos. 1 and 2 filed an application u/s 92 of the CPC seeking leave of the Court to permit them to file suit.

5. It is the case of the petitioners that they have a direct personal interest in the alleged trust. So, it is their case, that Additional District Judge, Ambala vide order dated 08.02.2013 (Annexure P-3) wrongly allowed the application of respondents Nos. 1 and 2 granting leave of the Court to them to institute the suit filed and notice of the suit was issued to the petitioners and respondents Nos. 3 to 6, who are defendants in the suit.

6. On the receipt of this notice, the petitioners, who are defendants Nos. 1 to 4 filed application before the trial Court with a prayer, that the order dated 08.02.2013 may be recalled, revoked and set aside in the interest of justice.

7. Keeping in view facts and circumstances of the case the notice of this revision need not be issued, as the service of notice shall cause further delay in disposal of the suit. The only prayer is that the permission granted at the time of institution of suit u/s 92 of the CPC was interim in nature.

8. Learned counsel for the petitioners placed reliance upon R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others, ; wherein, it was held that court is not bound to give such notice, although, it is rule of caution. The Court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not, thereby, be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants, because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

9. It was also held that a plain reading of Section 92 of the CPC indicates that leave of the court is a precondition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such suit is instituted without leave, it would not be maintainable at all. Having in mind, the objectives underlying Section 92 and the language, thereof, it appears to us that, as a rule of caution,

the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave u/s 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless.

10. Apart from this, they could, in a given case, point out that the persons who are applying for leave u/s 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave u/s 92 can be granted, as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted.

11. In the judgment *supra*, impugned judgment of the High Court was set aside and the trial Court was directed to dispose of the application for revocation of leave on merits and in accordance with law.

12. Learned counsel for the petitioners rightly contended that the impugned order should have been rendered on merit by the trial Court.

13. The learned trial Court placed reliance upon *Lachhman Dass Udasi and Others Vs. Ranjit Singh and Others*, ; wherein, it was held that if the notice is given to defendant prior to the order granting permission, it will amount to trying the suit twice, first at the time of granting the leave and secondly after leave is granted. It was further held that it is the satisfaction of the Court whether the leave should be granted or not.

14. The Hon'ble Supreme Court of India in *R.M. Narayana Chettiar and another's case (supra)* set aside the order of the trial Court by directing it to dispose of the application for revocation of leave on merits and in accordance with law.

15. The only grouse of the petitioner is that their application was not decided on merit. It was dismissed simply on the basis of *Lachhman Dass Udasi's case (supra)*, but as per Hon'ble Supreme Court's order application for revocation of leave should be decided on merits. Initially, leave was granted to the plaintiffs, who are respondents Nos. 1 and 2 and that order was interim in nature and the petitioners, herein, could move application for revocation of this order and that should have been decided by the trial Court on merits and should not have been dismissed summarily, that it was not mandatory to issue notice to the petitioners for grant of leave.

16. It is reiterated that permission, that was granted to the respondents Nos. 1 and 2 (plaintiffs), was interim in nature and that was subject to revocation at the instance of the petitioners on merits. So, the impugned order is not

inconsonance with the judgment of the Hon''ble Supreme Court, (supra). Therefore, the same is, hereby, set aside with direction to the trial Court to decide the application u/s 92 of the CPC of the plaintiffs, who are respondents Nos. 1 and 2 afresh on merits and in accordance with law. Initial order of granting permission is still on the record and application of the petitioners for seeking revocation of that order has to be decided afresh by the trial Court on merits afresh, as also, in accordance with law.