

(1990) 06 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1670 of 1988

Kartar Singh and Another

APPELLANT

Vs

Rup Singh

RESPONDENT

Date of Decision: June 8, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 44 Rule 1, 115

Citation: (1990) 98 PLR 448

Hon'ble Judges: Amrit Lal Bahri, J

Bench: Single Bench

Advocate: R.L. Gupta, for the Appellant; Hari Chand Garg, for the Respondent

Final Decision: Allowed

Judgement

A.L. Bahri, J.

Vide this order two Revision Petitions are being disposed of which have been filed by the same set of petitioners against Rup Singh, respondent and have arisen out of the same appeal

2. Kartar Singh and Balwant Singh, petitioners, filed an appeal as indigent persons in the Court of Additional District Judge, Bhatinda inter alia alleging that they were not in a position to pay the court fee on the appeal which was to the tune of Rs. 2,735/-. Thus application was contested on behalf of Rup Singh, respondent. Some details of the properties owned by the petitioners were mentioned therein and an enquiry was conducted by the Appellate Court while framing the following issues:

1. Whether Kartar Singh and Balwant Singh are paupers and unable to pay the Court fee? OPA
2. Whether the application is not in proper form? OPR
3. Whether the application is not maintainable? OPR

4. Relief.

Both Kartar Singh and Balwant Singh appeared as AWs and on the other hand Rap Singh, respondent appeared as RW. The Appellate Court held that Kartar Singh and Balwant Singh were not paupers, and unable to pay the Court fee. They had transferred their properties owned by them in favour of their wives and children by suffering a collusive decree after institution of the suit. Thus, their application was not maintainable. No arguments were addressed on issue No. 2 and the issue was decided against Rup Singh, respondent. With the result, Additional District Judge, declined the request of the petitioners to file the appeal as indigent persons. They were directed to make up court fee on the memorandum of appeal by July 18, 1986. Civil Revision No. 1670 of 1988 has been filed challenging the said order.

3. Subsequently, on nonpayment of the court fee, the Additional District Judge rejected the memorandum of appeal vide order dated August 5, 1988. Hence Revision Petition No. 2646 of 1988 has been filed against the said order.

4. Under Order 44 Rule 1 of the Code of Civil Procedure, any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal for permission to appeal as indigent person. In all such matters the provisions relating to suits by indigent persons were to be applicable, that is, rules provided under Order 33 of the Code. Under Order 44 Rule 3 of the Code, an enquiry was to be conducted if the appellant was an indigent person. Order 33 Rule 1 of the Code provides explanation regarding person who is an indigent person as under :--

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the exempt subject-matter of the suit.

5. It has been argued on behalf of the petitioners that in appeal the appellate Court was only required to see if the appellant was unable to pay the fee required on the memorandum of appeal and the appellate Court was in error in further coming to the conclusion that the transfer of properties made by the petitioners, who were appellants before the lower Appellate Court during pendency of the suit were illegal and in order to defeat the decree to be passed in the suit. In my view, the entire approach of the lower appellate Court seems to be incorrect. The only thing to be seen was as to whether the appellants were unable to pay fee on the memorandum of appeal at the time the appeal was filed. Allowing an appellant to prefer an appeal as an indigent person does not mean that payment of court fee on the appeal is foregone, rather recovery of court fee is merely postponed. Subsequently, as required under Order 33 Rule 14 of the Code of Civil Procedure, the Collector is

given power to recover the amount of court fee. The enquiry regarding transfer of properties by the petitioners after filing of this suit was, thus, uncalled for. May be after a decree is passed in favour of the respondent that such a question may crop up in execution, but at this stage, it is not necessary to adjudicate on that question. The fact remains that on the day the appeal was filed, the appellants were not in possession of sufficient means to pay fee on the memorandum of appeal and premission to file an appeal as indigent person should have been allowed.

6. For the reasons recorded above, the above Revision Petition is allowed. The impugned order is set aside and the petitioners are granted permission to prefer an appeal without court fee at this stage. In consequence the other Revision Petition No. 2646 of 1988 is also allowed and the impugned order therein is also set aside. The Appellate Court will decide the appeal on merits. There will be no order as to costs, Parties to appear there on 23.7.90.