

Amar Singh Vs Kamal Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 8, 2011

Acts Referred: Constitution of India, 1950 " Article 227

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 18995-CII of 2011

1. Application is allowed subject to all just exceptions.

Civil Revision No. 4779 of 2011

2. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 23.5.2011 vide

which learned trial Court has allowed application filed by Respondent No. 1-Kamal Singh for impleading him as a party being legal representative

of deceased -Mohan Lal.

3. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by

learned trial Court.

4. Facts relevant for the decision of present revision petition are that the suit for declaration was filed by present Petitioner-Plaintiff alongwith pro

forma Respondents-Plaintiffs on the ground that that they have become owners in possession of the land in dispute in equal shares as they have

acquired rights of occupancy tenancy as their possession is continuing without any interruption and without paying any rent batai etc. Suit was filed

against many persons including Mohan Lal. Brothers of Mohan Lal were also impleaded. Suit was filed on 6.12.2006. Present application was

filed by Respondent No. 1-Kamal Singh stating that Mohan Lal had already expired on 19.8.2000 and the present suit has been filed against a

dead person. It is not the case of Petitioner-Plaintiff that Mohan Lal was living on the date of filing of the suit or that Mohan Lal is still alive.

Learned trial Court has observed that the fact that Mohan Lal has expired is not disputed. Respondent No. 1 has stated that he is legal

representative of Mohan Lal on the basis of a Will dated 26.7.1997 being his son. This fact has been denied by Petitioner-Plaintiff. However, the

fact would be decided at the time of trial. The suit cannot be filed against a dead person and decree also cannot be passed against a dead person.

5. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in

permitting Respondent No. 1 to pursue this case as son and legal representative of Mohan Lal on the basis of alleged Will dated 26.7.1997 or that

a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

6. Moreover, law has been well settled by Hon"ble Apex Court in Surya Dev Rai Vs. Ram Chander Rai and Others, , that supervisory jurisdiction

is not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors for drawing inference like a Court

of appeal. It has been observed as under:

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter

disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

7. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.