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(2013) 09 P&H CK 0456

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2020 of 2013

Rajdeep Singh	APPELLANT
Vs	
Master Rajsher Singh	RESPONDENT

Date of Decision: Sept. 16, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227

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

Bench: Single Bench

Advocate: Vijay Sharma, for the Appellant; S.S. Katnoria, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.
Defendant Rajdeep Singh, who is father of respondent-plaintiff Master Rajsher Singh minor, has filed this revision petition under Article 227 of the Constitution of India impugning order dated 19.10.2012 Annexure P/5 passed by the trial court thereby allowing application Annexure P/2 filed by the respondent-plaintiff for permission to file suit as indigent person. Plaintiff has filed suit through his mother as next friend claiming maintenance from his father i.e. defendant-petitioner and also seeking creation of charge over the property mentioned in the plaint. Plaintiff has alleged that he has no moveable or immovable property and therefore, he has no means to pay court fee required for the suit.

2. Defendant by filing reply Annexure P/3 controverted the averments of the plaintiff made in the application Annexure P/2.

3. Learned trial court vide order dated 19.10.2012 Annexure P/5 has allowed the application Annexure P/2 filed by the plaintiff and has permitted the plaintiff to file suit as indigent person. Feeling aggrieved, the defendant has filed this revision petition to assail the said order.

4. I have heard counsel for the parties and perused the case file.

5. Counsel for the petitioner relying on judgment of this Court in Bishamber Lal and Anr. Versus Shanti Pershad Jaiswal and Ors., 2012 (4) PLR 450 contended that no opportunity was given to the parties to lead evidence in support of plea of respondent-plaintiff that he is indigent person and therefore, the impugned order is illegal. It was also argued that the respondent-plaintiff had a Fixed Deposit Receipt in his name and therefore, he was not indigent person.

6. I have carefully considered the aforesaid contentions which cannot be accepted in the facts and circumstances of this case. On repeated inquiries, counsel for the petitioner could not refer to any plea on behalf of the defendant-petitioner either in reply Annexure P/3 or in the instant revision petition that the respondent-plaintiff had any Fixed Deposit Receipt in his name. In fact the petitioner-defendant has not even pleaded that the respondent-plaintiff has any property at all. Consequently, there was no necessity of requiring the parties to lead evidence when the defendant-petitioner has not pleaded that plaintiff owned any moveable or immovable property. In these circumstances, judgment in the case of Bishamber Lal and Anr. (supra) is not applicable to the instant case.

7. Counsel for the petitioner also submitted that the respondent-plaintiff has pleaded to be having share in the suit land being ancestral property. However, the suit property stands in the name of the petitioner. On pointed inquiry, counsel for the petitioner did not concede the right of respondent-plaintiff to alienate his claimed share in the suit land to pay requisite court fee. Moreover, suit land being subject matter of the suit cannot be taken into consideration to determine the means or capacity of the plaintiff to pay requisite court fee. The trial court has thus rightly permitted the plaintiff to file the suit as indigent person. There is no perversity, illegality or jurisdictional error in impugned order of the trial court so as to call for interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition lacks any merit and is accordingly dismissed.