

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 3490 of 2009

Date of decision : 22-09-2015

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Gurdeep Singh

.....Petitioner

Versus

Surinder Kaur and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. A.S Sullar, Advocate for the petitioner.

Mr. M.P.S Mann, Advocate for the respondents.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner-defendant no.1 has filed the present revision petition against the order dated 14.5.2009 passed by the Additional Civil Judge (Senior Division) Samana (Annexure P-1), whereby the trial Court has allowed the application moved by the respondents-plaintiffs for leading additional evidence for examining Parvinder Singh as prosecution witness.

The respondents-plaintiffs filed a suit for joint possession to the extent of 1/5th share each in respect of agricultural land as detailed in the head note of the plaint and for declaration to the effect that the judgment and decree dated

29.9.1987 passed by the Sub-Judge 1st Class Patiala and mutation no. 983 to the extent of Gurdeep Singh defendant no.1 declaring him as exclusive owner was illegal, null and void.

The suit was opposed by the petitioner-defendant no.1 by filing written statement on the ground that the suit was not maintainable as the impugned judgment and decree under challenge had been passed on the basis of the statements made by the parties to the suit in the presence of their counsel.

The present suit had been instituted on 12.4.2004 and on 3.10.2007, the respondents-plaintiffs examined prosecution witness Parvinder Singh in rebuttal evidence but his cross-examination was deferred as defendant no.2 opposed his examination on the ground that testimony sought to be adduced by PW Parvinder Singh is of affirmative nature and cannot be allowed to lead in rebuttal evidence. A revision was filed by petitioner-defendant no.1 in this Court and vide order dated 28.7.2008, the same was accepted and the respondents-plaintiffs were given opportunity to move an application for leading additional evidence. Thereafter the respondents-plaintiffs made the present application to examine prosecution witness Parvinder Singh in additional evidence at the stage of rebuttal evidence on the ground that this piece of evidence was not available with the respondents-plaintiffs at the time of leading affirmative evidence as they were not on visiting terms with Parvinder Singh and his other family members.

Order dated 28.7.2008 passed in Civil Revision

No.5426 of 2007 titled as `Gurdeep Singh vs. Sampuran Kaur and others' is reproduced as under:

“The evidence of plaintiff as well as defendant was closed. Thereafter PW-4 tendered his evidence in examination in the form of rebuttal evidence. Onus was on the plaintiff and this was to be discharged by leading affirmative evidence. Plea is that it cannot be done in rebuttal. Faced with this situation, learned counsel appearing for respondents no.2 and 3 submits that he will not have any objection if the impugned order is set aside. He, however, seeks liberty to move an application for leading additional evidence. The present revision petition is thus allowed. The impugned order is set aside. The petitioner will have liberty to move an application for leading additional evidence. The application, if moved, be considered and decided in accordance with law.”

A perusal of the above said order makes it clear **that it was the respondents-plaintiffs who had been granted liberty to move application for leading additional evidence as recording of evidence of PW-4 Parvinder Singh was objected to by the defendants at the stage of rebuttal evidence.**

The application for additional evidence has been allowed keeping in view that the dispute was between close family relations

and after the death of Sampuran Kaur in the year 2007 relations between the respondents-plaintiffs and PW Parvinder Singh got revived who told the respondents-plaintiffs that they have never consented to relinquish their share in the compromise on the basis of which the award dated 29.9.1987 was passed. In order to avoid multiplicity of proceedings between the parties, the application has been rightly allowed as the deposition of Parvinder Singh would be necessary for just and proper decision of the case.

In view of all that has been discussed above there is no illegality or infirmity in order dated 14.5.2009 warranting interference of this Court. Hence, present revision petition is dismissed.

22-09-2015
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(**RITU BAHRI**)
JUDGE