

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2522 of 2015

Date of decision: 10.04.2015

Sukhwant Singh

... Petitioner

versus

Neena Beri and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Paramjit Singh Thiara, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The defendant, who is contesting the suit for joint possession claimed by his sister on the basis that the suit properties are joint family properties, is aggrieved by two additional issues framed by the court on the basis of his pleadings. There is an issue framed already placing the burden of proof on the plaintiff correctly, "Whether the suit property is joint ancestral coparcenary property of the parties." The defendant has taken up a plea that some part of the suit property had come to the share of Gurdev Singh through a court decree and some properties have been come to him by means of bequest through Will said to have been executed by Dhan Kaur and

Lal Singh. The manner of acquisition of a right to the property will have a definite bearing of whether a property is ancestral or not and the court below has, therefore, framed issues on the basis of pleadings setting out a source of title to the father. The attempt is, therefore, to point out that the properties coming through the said documents cannot partake the character of ancestral properties. The defendant is aggrieved to come on a revision to state that these issues are unnecessary and the issue, whether the suit property is joint family property will itself take care of issues No.4 and 5. I reject this argument for the omnibus issue regarding joint family character of the property would still require a specific focus on the manner of acquisition of individual right on the property as pleaded by the defendant. If the defendant, therefore, sets up in defence a source that could defeat the plaintiff's claim, it is only appropriate that specific issues are framed therefor.

2. There is also a defence of a Will which the defendant has set up as having been executed by the father on a plea that the properties are separate properties of the father and that he had a competency to execute a Will. Wherever a party propounds a Will, the burden is always on that person in terms of Section 68 of the Evidence Act and the court is bound to frame an issue whether it is admitted or otherwise. The court has failed to frame an issue. When I pointed this to the counsel for the petitioner, the counsel wanted to

withdraw the civil revision itself. I decline to the petitioner such an option sought to be exercised by the petitioner, for, when the court is informed about the status of the case and a deficiency in issues that were framed, it becomes this court's duty to ensure that the appropriate issues are framed so that parties stay on course. If the defendant has a grievance that the additional issues were unnecessary, this court has a perception that a necessary issue which was required to be framed is not there.

3. I invoke the suo motu power to frame additional issue to the plaintiff as follows:-

Whether the Will alleged to have been executed by the father in a sound disposing state of mind true & valid, and if true, whether it could operate in respect of the whole of the properties as claimed by the defendant?
OPD.

4. The revision petition is disposed of as above. The Registry shall dispatch the copy of the order to the court below for appropriate incorporation of the issues framed by this court.

(K.KANNAN)
JUDGE

10.04.2015
sanjeev