

CR No.2260 of 2014 (O&M)

[1]

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

**CR No.2260 of 2014 (O&M)
Date of decision:21.02.2015**

Mahindo Bai and another

...Petitioners

Versus

Balbir Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

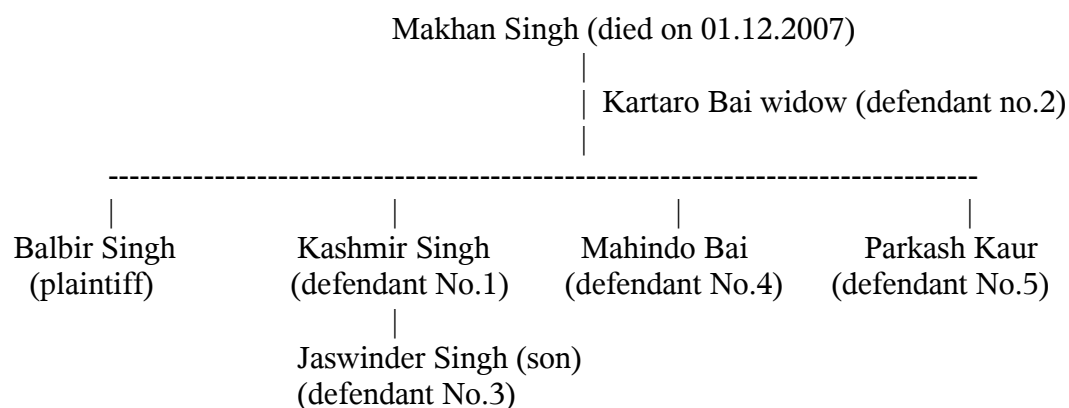
Present: Mr. Raman Goklaney, Advocate,
for the petitioners.

Mr. R.K.Aneja, Advocate,
for respondent no.1.

Rakesh Kumar Jain, J.

The petitioners are aggrieved against the orders dated 01.02.2014 and 11.03.2014, dismissing their applications for leading additional evidence and amendment in the written statement respectively.

In short, the petitioners are defendants no.4 and 5 in the suit filed by the plaintiff-respondent no.1 Balbir Singh. To begin with, it would be relevant to refer to the pedigree table, part of the plaint, which reads thus:-



The plaintiff has alleged that he along with defendant no.1

Kashmir Singh are owners in possession, in equal shares, of land measuring 24 kanals, situated in village Hasta Kalan, Tehsil Fazilka and the mutation no.1796, recorded on the basis of the Will dated 16.01.2008, in favour of defendants no.4 and 5 qua the land comprised in Rect. No.67 Killa No.5 (8-0) and also in favour of defendant no.3 qua the land comprised in Rect. No.67, Killa No.15 (8-0) is illegal.

During the pendency of the suit, defendants no.4 and 5 filed an application under Section 151 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) seeking permission to lead additional evidence to the effect that Makhan Singh, predecessor-in-interest of the parties and owner of the suit land, executed and registered two transfer deeds bearing vasika nos.2596 and 2583 dated 29.08.2007 in favour of defendants no.4 and 5. It was alleged in the application that those defendants were not in custody of the said transfer deeds at the time when they were leading their evidence. The said application was dismissed vide the impugned order dated 01.02.2014 on the ground that the petitioners had nowhere pleaded the transfer deeds in their written statement and this evidence cannot be allowed beyond the pleadings.

The petitioners then filed an application to amend the written statement to take the plea regarding the transfer deeds dated 29.08.2007 but the said application was dismissed on 11.03.2014 on the ground that the earlier application was dismissed on 01.02.2014 for additional evidence and thus at the fag end of the trial, the application for amendment cannot be allowed.

CR No.2260 of 2014 (O&M)

[3]

Learned counsel for the petitioners, by way of C.M. No.20349-CII of 2014, has placed on record, both the registered transfer deeds dated 29.08.2007, as Annexures P-10 and P-11 for the perusal of the Court. The application is allowed and the documents are taken on record.

Counsel for the petitioners has argued that the dispute is between the brothers and sisters about the immovable property of their father Makhan Singh. One of the brothers, namely, Balbir Singh has staked his claim over the entire property of Makhan Singh along with his another brother Kashmir Singh on the basis of a registered Will dated 13.08.2007 and has challenged the registered Will in favour of the other defendants. The petitioners, sisters of plaintiff and defendant no.1, are claiming that they have got the registered transfer deeds in their favour by their father Makhan Singh on 29.08.2007, therefore, after the death of Makhan Singh, the Will in favour of the plaintiff and defendant no.1, would be meaningless as the property had already been transferred by him during his lifetime and the Will dated 13.08.2007 would not have any impact. Thus, in order to decide the real controversy between the parties, the amendment can be allowed even at the belated stage, as held by the Supreme Court in the case of **Surender Kumar Sharma v. Makhan Singh**, 2009(2) R.C.R. (Rent) 354.

On the other hand, learned counsel for the respondents has supported the impugned orders and stated that the amendment could not be allowed at the fag end of the trial.

After hearing learned counsel for the parties and examining the

CR No.2260 of 2014 (O&M)

[4]

available record, I am of the considered opinion that since the dispute is between the real brothers and sisters in regard to the estate left behind by their father in which both the parties have set up their registered Wills, it would be in the interest of justice if defendants no.4 and 5, who have also got registered transfer deeds executed in their favour by their father, are also allowed to plead those documents in their written statement and lead evidence because if the registered transfer deeds are proved, then the Will set up by the plaintiff would pale into insignificance because at the time of death of Makhan Singh, he would not be having the said property in his hands for the purpose of bequeathing it in favour of the plaintiff and defendant no.1.

In view thereof, the present revision petition is hereby allowed, the impugned orders dated 01.02.2014 and 11.03.2014 passed by the Court below are set aside and the petitioners are allowed not only to plead the registered transfer deeds in their written statement but also to lead evidence in that regard by way of additional evidence.

February 21, 2015
vinod*

(Rakesh Kumar Jain)
Judge

Note: Whether this judgment should be reported in the Digest? Yes / No