

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

**CR No.2525 of 2013 (O&M)
Date of Decision: 11.12.2015.**

HanumanPetitioner

Versus

Purshotam Kumar Sharma and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. N.S. Shekhawat, Advocate
for the petitioner.

Mr. Navin S. Bhardwaj, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 29.01.2013 passed by Civil Judge (Jr. Divn.), Mohindergarh whereby an application under Order 14 Rule 5 CPC filed by defendant No.1 now petitioner has been dismissed.

[2]. Purshotam Kumar and Prem Lata @ Sunita filed suit for declaration to the effect that they are owners of 1/7th share of Jagdish Parshad. One Hardial was the owner of landed property. He had one son Jhabar. Surji was married to Jhabar. Jhabar had three sons and four daughters namely Jagdish, Hanuman, Ram Bilas, Parvati, Triveni, Mishri and Bhagirathi.

Ram Bilas was given in adoption to Maha Devi widow of Sunda son of Hardial therefore, he was not treated to be the family member of Jhabar. Jhabar died on 01.01.1962 and his landed property was apportioned in 7 equal shares each in favour of Surji (wife), Jagdish (son), Hanuman (son) and Parvati, Mishri, Triveni, Bhagirathi as daughters. Each one got 1/7th share of total land left by Jhabar. Jagdish was having 1/7th share. After his death, he left Santra as widow and Madan Lal as son. Madan Lal died in 1979. He was unmarried and issueless. Plaintiff No.1 claimed themselves to be beneficiary of Will dated 09.03.2009 executed by Santra. Plaintiff No.2 Prem Lata also claims herself to be widow of Madan Lal. They filed a suit for declaration to the effect that they are owners of 1/7th share from Jagdish. Plaintiff No.1 Purshotam Kumar claims himself to be brother of Santra and plaintiff No.2 claims herself to be widow of Madan Lal.

[3]. Trial Court framed the following issues:-

“1. Whether the plaintiffs are owners to the extent of their share, as mentioned in their plaint and are entitled to get their names recorded accordingly in the revenue record as alleged? OPP

2. Whether the plaintiffs are entitled for a decree for permanent injunction,

as prayed for? OPP

3. Whether the plaintiffs were taking care of Smt. Santra, since deceased, during her life time, as alleged? OPP

4. Whether the plaintiff No.2 is not the legally wedded wife of Madan Lal son of Jagdish, as alleged? OPD

5. Whether Santra W/o Jagdish Parshad had not executed a legal Will in favour of plaintiff No.1 by her free will and consent, as alleged? OPD

6. Whether the plaintiffs have got no locus standi and cause of action to file the present suit, as alleged? OPD

7. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct, as alleged? OPD

8. Whether the suit is liable to be dismissed for non joinder of necessary parties, as alleged? OPD

9. Whether the defendant No.1 is entitled for the relief claimed by way of counter claim, as alleged? OPD

10. Relief.”

[4]. Learned counsel for the petitioner contends that issues No.4 and 5 have been negatively framed. Plaintiffs themselves have come forward to claim relief qua Will as well as defendant

No.2 being widow of Madan Lal. These issues should have been framed on positive note. Learned counsel contends that issue No.4 should have been framed in the following manner:-

“ Whether plaintiff No.2 is legally wedded wife of Madan Lal son of Jagdish as alleged? OPP

Similarly, issue No.5 should have been framed in the following manner:-

“ Whether Santra wife of Jagdisdh Parshad had executed a legal Will in favour of plaintiff No.1 by her free will and consent as alleged? OPP

[5]. Apparently, framing of these issues would give negative onus on the defendants and in the event of these issues not proved by the defendants, no benefit can be given to the plaintiff as onus of relief in terms of Sections 101 and 102 of the Indian Evidence Act is always on the party who assailed inaffirmative. Since the plaintiffs have come forward by way of assertion of positive fact that plaintiff No.1 is the beneficiary of Will, therefore, it is legally incumbent upon plaintiff No.1 to prove the due execution of Will and onus of such an issue is always on the party who asserts in-affirmation. Issue No.5 should have been reframed in the aforesaid manner. Similarly, plaintiff No.2 claimed herself to be legally wedded wife of Madan Lal, therefore, onus is on her to prove the aforesaid fact and onus

should have been fastened upon the plaintiff No.2 to prove the factum of her marriage with Madan Lal.

[6]. In view of aforesaid, in considered opinion of this Court, issues No.4 and 5 are required to be reframed by the trial Court in the manner as suggested above. Learned counsel for the respondents has objected to the aforesaid course on the ground that since counter claim has also been filed, therefore, reversal of onus would give unnecessary benefit to the counter claimant.

[7]. I have considered issue No.9 as well. Perusal of issue No.9 obligates defendant No.1 to prove his case in respect of counter claim and onus has been rightly fastened upon him. In the event, plaintiff being successful under issues No.4 and 5, the decision of issue No.9 would be the resultant effect on said issues, therefore, I am of the view that impugned order dated 29.01.2013 is not legally sustainable. Consequently, impugned order is set aside. This revision petition is allowed. Trial Court is directed to recast the issues No.4 and 5 in the manner as suggested above and thereafter proceed with the suit in accordance with law.

11.12.2015
prince

(RAJ MOHAN SINGH)
JUDGE