

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2909 of 2015 (O&M)

Date of decision: 28.04.2015

Harbans Lal and others

... Petitioners

versus

Dharam Singh and another

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mukand Gupta, Advocate for the petitioner.

K.Kannan, J.

The revision is against the order which issues order declining to recast the issues as sought for by the defendant. The suit is for recovery of possession of property of 5 bighas and 14 biswas of land claimed by the plaintiff as having been purchased by him from three persons, namely, Puran Singh, Ashok Kumar and Sunder. The plaintiff would refer to a transaction of measurement brought through in report dated 18.06.2010 as the basis for his assertion that the defendant had trespassed on the property. The plaintiff would state that the demarcation itself has carried through subsequent suit which had instituted in civil suit No. 231 of 2005 but the defendant took forcible possession subsequent to the decree.

The defendant has denied the plaintiff's contention and has denied the plaintiff's entitlement to the property as claimed by him. It is contended *inter alia* that the plaintiff has suppressed two earlier proceeding, one, the civil suit No. 320 of 2005 and another 285 of 2005 where decrees have been passed and the decisions in the said suits will constitute *res judicata* against the plaintiff's claim. It is also stated that the first defendant is a mentally retarded person and the guardian must

have been proposed and the court could not set him ex-parte without appointing a guardian. Based on the pleadings, the Court has framed several issues including the following:

“7A Whether the plaintiff is owner of the suit land measuring 5 bighas 14 biswas?OPD

7B Whether demarcation report dated 18.06.2010 is legal and valid? OPD

7C Whether defendant No.1 was mentally retarded on the date of filing of suit and bed ridden and plaintiff has not disclosed the same in plaint despite knowledge? If so its effect? OPD

7D Whether the defendants have become owners of suit land by way of adverse possession? OPD”

Of these issues, it can be noticed that apart from 7D, all other issues are wrongly cast. The Court has declined to modify the issues only because according to it, the issues are framed on the basis of legal contentions taken by the defendant and therefore, the burden will be cast only on the defendant. The burden is cast without referring to the principles laid down under Section 101 to 109 of the Evidence Act. I thought for a while whether notice would be required to be sent, but, in my view framing of appropriate issues is the Court's duty and parties are only required to assist the Court, if the Court has any doubt as regards the same. Since the issues are wrongly framed, I recast the issue dispensing notice to the respondent and direct the trial Court to proceed with the trial, along with other issues already framed. Issues Nos. 7A to 7B are redrafted to be deleted as under:-

7A.Whether the plaintiff is the owner of the suit land measuring 5 bighas and 14 biswas? OPP.

7B.Whether the demarcation report dated 18.06.2010 is legal and valid? OPP.

Issue No. 7C is deleted and 7D is recast as 7C.

I do not think any issue regarding the mental retardation

could be required to be framed. On the other hand, the court has duty under Order 32 Cr.P.C to obtain an inquisition on the mental condition of a party, if he is stated to be mentally so affected and that he cannot take care of his own interest. In the light of the defense taken, I direct the inquisition of the mental condition to be taken by ordering the production of the 1st defendant before the District Medical Officer of the Government hospital at district Bhatinda. The District Medical Officer will constitute a medical board comprising of a psychiatrist and any physician of competence who can assess the mental capabilities of a person. After such an examination, the report shall be sent to the Court and the Court will take appropriate steps in the light of the report given. If he is found to be mentally retarded or mentally ill, it may propose a guardian among relatives who are prepared to act as such. The Court will ensure that the person appointed as guardian is atleast a person who is not having any adverse interest with the 1st defendant.

The orders passed already will stand modified and the civil revision is allowed and disposed of to the above extent.

28.04.2015
kv

(K.KANNAN)
JUDGE