

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

CR No. 2837 of 2012
Date of Decision : 28.7.2015

Banarsi DassPetitioner

Versus

Sunita Rani @ Sarita Rani and othersRespondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present : Mr. Dinesh Nagar, Advocate, for the petitioner

Mr. Nitish Garg, Advocate, for respondent No. 1

M.M.S. Bedi, J.

This order will dispose of a revision petition filed against the order dated 25.4.2012, dismissing the application of the plaintiff/petitioner for framing of an additional issue.

Learned counsel for the petitioner has submitted that in para No. 9 of the plaint it was specifically mentioned by the plaintiff that the matter has been compromised between the parties on 23.8.2003. Litigation regarding partition was pending before the revenue authorities. The trial Court has refused to accede the request of the petitioner to frame additional issue on the ground that the issues already framed are comprehensive enough to cover the plea of the petitioner/plaintiff. Learned counsel for the petitioner further submits that the trial Court ought to have framed additional issue on the basis of the averments made in para No. 9 of the plaint and the averments raised in para No. 9 of the written statement.

I have heard learned counsel for the petitioner as well as learned counsel for the respondent No. 1 and carefully gone through the pleadings and the nature of litigation.

The plaintiff/petitioner has filed a suit for declaration before the Civil Court claiming that order of partition dated 1.12.2003, passed by the Assistant Collector Ist Grade, Nawanshahar, on partition application filed by defendants No. 2 and 3 and others and Sanad Takseem prepared on the basis of said partition order, are illegal, null and void and inoperative qua the ownership and possessory rights of the plaintiff and other coparceners. An attempt is being made by the plaintiff to wriggle out of the consequences of the execution of the said order. The plaintiff/petitioner has raised one of the grounds that a compromise during pendency of the partition proceedings had been entered into on 23.8.2003 but that was not implemented. Whether such an interim compromise, referred to in the pleadings, could be a ground to challenge the final partition proceedings, is to be determined by the trial Court at the time of final adjudication. Whether order dated 1.12.2003 and Sanad Takseem are null and void for the grounds taken up in the plaint, has to be finally decided. The factum of compromise as pleaded in the plaint has been denied by the defendants/respondents but the said denial do not necessarily warrant the framing of an issue. It is always open to both the parties to lead evidence in context to fact in issue by producing relevant evidence as per Section 5 of the Evidence Act. Issue No. 1, which has already been framed by the trial Court is “whether the order regarding the validity of partition order dated 1.12.2003 is liable to be set aside”. The said comprehensive issue would

entitle the plaintiff/petitioner to lead evidence in context to the pleadings. The said comprehensive issue will include all the grounds taken by the plaintiff.

In view of the above circumstances, I do not find any infirmity in the order passed by the trial Court. The order dismissing the application for additional issue is, therefore, upheld and the revision petition is dismissed being without merit.

The parties are directed to appear before the trial Court on 22.8.2015 or any other date fixed by the trial Court, whichever is later, for further proceedings in accordance with law.

In view of the nature of the proceedings pending, it is ordered that the trial Court shall make endeavour for expeditious disposal of the suit by giving short dates as the matter appears to be pending since long.

(M.M.S. BEDI)
JUDGE

28.7.2015
Ashwani