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

CR No.4505 of 2015

Date of decision: July 21, 2015

Tara Singh

.....Petitioner

Versus

Surjit Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Baljinder Singh, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 04.05.2015, whereby, trial Court had treated issue No.4 as preliminary issue.

Learned counsel for the petitioner has submitted that the trial Court has erred in treating the issue No.4 as preliminary issue. The prayer for treating issue No.4 as preliminary issue should have been made at an earliest stage. In support of his arguments, learned counsel has placed reliance on ***Satish Kumar and another versus Lal Chand***, 2003(2) PLJ 77, wherein, it was held as under:-

“5. If the provisions of Order XIV Rule 2 are examined along with the provisions of Order VII Rule 11 of the Code, then it becomes evident that this provision is no longer mandatory obliging the Court to dispose of the issue as a preliminary issue. The basic object of this provision appears to

be to avoid unnecessary remand and retrial. It is well settled that if an issue is a mixed question of facts and law and would need adducing of evidence, then such an issue cannot be decided as a preliminary issue as has been held by this Court in Civil Revision No. 3405 of 1999, titled *Jagdev Singh v. Sardarni Prem Parkash Kaur and Ors.*, decided on 26.2.2002 (:2001 (2) PLR 391 . It has become further clear that the party which was keen for treating the issue as a preliminary issue like the defendant-petitioner should have pleaded such an objection at the earliest stage. This proposition is supported by the view taken by the Allahabad High Court in the case of *The Manager Bettiah Estate v. Sri Bhagwanti Saran Singh*, AIR 1993 Allahabad 2.”

The head note of the plaint reads as under:-

“Suit for declaration to the effect that plaintiff has life interest in the property measuring 38K-12-2/3M i.e. land measuring 29K-6-2/3M detailed as: (i) land measuring 11K-15-1/3M being 353/1299 share of land measuring 43K-6M comprised in khewat no.58, khatauni no.285, killa no.8//11/1/1, 11/2/2, 12, 13, 18/1, 19/1, 20/1/1/1, 20/2/2/1, 9//12, 13, 14, 15, 16/1, 17/1, 17/3, 18/1, 24/2, (ii) land measuring 4K-11-2/3M being 1/3 share of land measuring 13K-15M comprised in khewat no.59, 286, killa no.8//21/1/1/1, 9//17/2, 17/4, 18/2, 18/3, 23/1, 24/1, 24/3, (iii) land measuring 5K-2M out of land measuring 17K-10M comprised in khewat no.60, khatauni no.287, killa no.8//21/1/1/3, 21/2/2/2, 9//23/2, 24/6, (iv) land measuring 1K-16M being 36/127 share of land measuring 6K-7M comprised in khewat no.61,

khatauni no.288, killa no.9//25/1/3, (v) land measuring 0K-4-1/3M being 1/3 share of land measuring 0K-13M khewat no.62, khatauni no.289, killa no.8//21/1/1/2, 9//24/4, 24/5, 25/1/2, (vi) land measuring 5K-17-1/3M being 1/3 share of land measuring 17K-12M comprised in khewat no.329, khatauni no.__ killa no.8//18/2, 19/2, 20/1/1/2, 21/2/2/1, 22/1/1, 23/1, 12 as per jamabandi for the year 2007-2008 situated at village Sultanpuria H.B. No.212, Tehsil Rania Distt. Sirsa; and land measuring 9K-6M comprised in khewat no.419, khatauni no.470, killa no.230//15/2/3, 231//11/2, 20/1, as per jamabandi for the year 2011-2012 situated at village Jiwan Nagar H.B. No.124, 126, 127 Tehsil Rania Distt. Sirsa, on the basis of registered will dated 15/10/2007 executed by wife of plaintiff now deceased Gurmeet Kaur wife of plaintiff

AND

Suit for recovery of Rs.1,80,000/- (Rs. One Lac and Eighty Thousand) i.e. Rs.1,20,000/- (Rs. One Lacs and Twenty Thousand) from defendant no.1 and Rs.60,000/- (Rs. Sixty Thousand) from defendant no.2 on the account of arrears of theka/maintenance for the year 2011 since June 2011 to June 2013 on the basis of right created through will by Smt. Gurmeet Kaur wife of Tara Singh plaintiff as well as on the basis of acknowledgment of defendants no.1 and 2 alongwith other brothers Mohinder Singh and Beera Singh, dated 13/02/2009

AND

Suit for mandatory injunction directing both the defendants no.1 and 2 to pay the future

maintenance to plaintiff @ Rs.60,000/- (Rs. Sixty Thousand) per year by the each defendants no.1 and 2 and in alternative directing the defendants no.1 and 2 to handover the possession of land measuring 38K-12-2/3M i.e. land measuring 29K-6-2/3M detailed as: (i) land measuring 11K-15-1/3M being 353/1299 share of land measuring 43K-6M comprised in khewat no.58, khatauni no.285, killa no.8//11/1/1, 11/2/2, 12, 13, 18/1, 19/1, 20/1/1, 20/2/2/1, 9//12, 13, 14, 15, 16/1, 17/1, 17/3, 18/1, 24/2, (ii) land measuring 4K-11-2/3M being 1/3 share of land measuring 13K-15M comprised in khewat no.59, 286, killa no.8//21/1/1/1, 9//17/2, 17/4, 18/2, 18/3, 23/1, 24/1, 24/3, (iii) land measuring 5K-2M out of land measuring 17K-10M comprised in khewat no.60, khatauni no.287, killa no.8//21/1/1/3, 21/2/2/2, 9//23/2, 24/6, (iv) land measuring 1K-16M being 36/127 share of land measuring 6K-7M comprised in khewat no.61, khatauni no.288, killa no.9//25/1/3, (v) land measuring 0K-4-1/3M being 1/3 share of land measuring 0K-13M khewat no.62, khatauni no.289, killa no.8//21/1/1/2, 9//24/4, 24/5, 25/1/2, (vi) land measuring 5K-17-1/3M being 1/3 share of land measuring 17K-12M comprised in khewat no.329, khatauni no.__ killa no.8//18/2, 19/2, 20/1/1/2, 21/2/2/1, 22/1/1, 23/1, 12 as per jamabandi for the year 2007-2008 situated at village Sultanpuria H.B. No.212, Tehsil Rania Distt. Sirsa; and land measuring 9K-6M comprised in khewat no.419, khatauni no.470, killa no.230//15/2/3, 231//11/2, 20/1, as per jamabandi for the year 2011-2012 situated at village Jiwan Nagar H.B. No.124, 126, 127 Tehsil Rania

Distt. Sirsa.”

During the pendency of the suit, defendants moved an application under Order 14 Rule 2(2) of Code of Civil Procedure, 1908 for treating issue No.4 as preliminary issue. Issue No.4 reads as under:-

“4. Whether this court has no jurisdiction to entertain and try the present suit? OPD (1 and 2)”

The learned trial Court while allowing the application rightly came to the conclusion that it would be necessary in the facts of the present case to treat issue No.4 as preliminary issue because the suit had been filed by the petitioner against his sons by basing claim qua the property situated within district Sirsa on the basis of Will dated 15.10.2007, whereas, the suit had been filed by the petitioner in the Court at Samrala. The judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

July 21, 2015
mahavir