

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5451 of 2012 [O&M]
Date of Decision : February 20th, 2015

Jaspal Kaur and another

.... Petitioners

Versus

Gurnek Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Jigyasa Tanwar, Advocate,
for the petitioners.

Mr. Himanshu Puri, Advocate
for Mr. J.S.Ghuman, Advocate,
for respondents No.2 to 4.

Dr. BHARAT BHUSHAN PARSOON, J.

A suit for declaration to the effect that plaintiffs are owners in joint possession to the extent of half share each in the suit land, challenging the Gift deed dated 19.12.1997, is pending adjudication before the Additional Civil Judge [Senior Division], Fatehgarh Sahib.

2. When the case was at the final stage, an application was moved by the plaintiffs for leading additional evidence which was allowed on 31.7.2012. Plaintiffs were allowed to prove birth certificates Ex. P18 and P19 in additional evidence. Since these documents were in Urdu, transliterate Ex. P18-A and Ex. P19-A of these documents was also permitted. Tendering these documents additionally in evidence, plaintiffs had closed their additional evidence.

3. As the case was at the final stage, rebuttal evidence was to be produced by the plaintiffs. While concluding their affirmative evidence or additional evidence, no where right of producing rebuttal evidence was

reserved by the plaintiffs.

4. In their affirmative evidence, the plaintiffs had examined Smt. Jaspal Kaur [PW1] and Sher Singh [PW-2]. In their rebuttal evidence, their additional affidavits by way of examination-in-chief were sought to be produced with the witnesses for their cross-examination which move of the plaintiffs was objected to by the defendants-respondents herein. By way of the additional evidence of witnesses Smt. Jaspal Kaur and Sher Singh, birth certificates, Ex. P18 and P19 were ventured to be explained by mentioning their nick names as well. Since additional evidence had been allowed only to produce two birth certificates and no oral evidence was permitted, there was no scope for adducing any evidence to prove these birth certificates.

5. Even otherwise, there was no issue on which such type of evidence could be led by the plaintiffs in rebuttal. Sequelly, the lower Court had declined the said additional affidavits in examination-in-chief of Smt. Jaspal Kaur and Sher Singh, witnesses already examined in affirmative to be taken on record. This order of 3.9.2012 is under challenge in this revision petition.

6. It is claimed that nothing new is being brought in evidence and effort is only to clarify the situation to equip the Court to decide the matter more effectively and competently.

7. Counsel for the respondents, on the other hand, has urged that the effort rather is to fill in lacunas. It is urged that additional evidence could be led only to the extent to which it had been allowed.

8. During the course of arguments, perusal of the paper book reveals that the plaintiffs have found birth certificates, Ex. P18 and P19 with their transliterate Ex. P-18A and P-19A respectively to be incomplete. To support their cause, a very clever move is afoot by the plaintiffs by way of examining Smt. Jaspal Kaur and Sher Singh as Pws in rebuttal evidence even when they have already been examined in affirmative evidence, with a view to show that Smt. Jaspal Kaur, plaintiff No.1 is also known as Smt. Harbanso and plaintiff No.2, Smt. Dalbir Kaur alias Bholi is

also known as Kaki.

9. Neither such foundation was laid in the plaint of the plaintiffs nor it had been so mentioned in the application for additional evidence when their birth certificates were sought to be produced additionally. The endeavor of the plaintiffs is to completely change the colour, hue and shade of the documents, i.e. birth certificates, Ex. P18 and P19. When there is no foundation already laid either in the pleadings or in the evidence within the ambit and scope of the pleadings of the plaintiffs that Smt. Jaspal Kaur was also known as Smt. Harbanso and Smt. Dalbir Kaur alias Bholi as Kaki, no such evidence surreptitiously could be allowed to be led in rebuttal evidence.

10. Plea of the counsel for the petitioners-plaintiffs is further that there is issue No. 5 which reads as under :-

“Whether the plaintiffs have no locus standi or cause of action to file the suit? OPD”

11. It is claimed that rebuttal is being led on this issue.

12. Evidence sought to be produced by way of producing Smt. Jaspal Kaur and Sher Singh in the witness box in rebuttal, when they have already been examined in their affirmative evidence, is not rebuttal to issue No.5 but the effort is to explain birth certificates, Ex. P18 and P19 which attempt of the plaintiffs has rightly been rejected by the Court below. Since the plaintiffs were knowing their childhood names, this should have come in the plaint as well as in the evidence of Smt. Jaspal Kaur and Sher Singh when they were examined in affirmative evidence.

13. Impugned order in its relevant portion with approval is reproduced as below:-

“..Both these witnesses have already been examined in affirmative as PW1 Jaspal Kaur and PW2 Sher Singh. Both in their affidavits tendered then, they have no where mentioned that childhood name of Jaspal Kaur is Harbanso and that of Dalbir Kaur as Kaki. In the additional evidence, plaintiffs have

tendered the birth certificates of Harbanso and Kaki and now in order to co-relate these birth certificates, which have been tendered in evidence today, the plaintiff want to examine Jaspal Kaur, plaintiff No.1 and Sher Singh, her maternal uncle as PWs in rebuttal evidence whereas their statements have already been recorded in affirmative. Thus, by way of evidence in rebuttal, Jaspal Kaur and Sher Singh want to make improvements in their earlier statements stating the childhood names of the plaintiffs. The childhood names of the plaintiff are already with the plaintiffs and their maternal uncle, so they could have stated these names when evidence was led in affirmative by the plaintiffs. These affidavits cannot be taken in rebuttal evidence. Moreover while disposing of the application for additional evidence filed by the plaintiffs, tendering of birth certificates was allowed on 31.8.2012 and it has been specifically held that the plaintiffs are entitled to tender the birth certificates and no witness is to be examined by the plaintiffs in respect of those birth certificates and after the additional evidence was allowed and today the birth certificates were tendered. Plaintiff now came with the additional affidavits of PW1 Jaspal Kaur and PW2 Sher Singh in rebuttal evidence, which cannot be allowed at this stage. So affidavits of both these witnesses are not to be allowed to be taken as evidence. PW Jaspal Kaur and PW2 Sher Singh are not allowed to be examined in rebuttal.”

14. From the discussion made earlier, it is clear that there is no merit in the revision petition. The same is dismissed.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 20th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?