

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 6412 of 2015

Date of decision : October 29, 2015

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Sunita

.....Petitioner

Versus

Ashok Kumar and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Jagjeet Beniwal, Advocate for the petitioner.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This revision petition has been filed against the order dated 13.8.2015 (Annexure P-4) passed by the Civil Judge (Junior Division), Gohana vide which the application of the petitioner for examining two witnesses along with requisite registration record in rebuttal evidence has been dismissed and the order dated 9.9.2015 (Annexure P-7) passed by the Civil Judge (Junior Division) Gohana vide which the application of the petitioner for leading additional evidence has also been dismissed.

The petitioner had filed a suit for declaration to the effect that the parties to the suit are the owners in joint possession of agricultural land mentioned in the head note of the plaint and as per

the jamabandi for the years 2006-07, defendants have no right, title or interest whatsoever with 1/4th share of the land measuring 21 kanals 14 marlas (detailed in the head note of the plaint) and that the Will dated 14.2.2007 executed by deceased Ramdhari son of Sh. Tekan in favour of defendant no.1-Ashok Kumar and Smt. Nirmala widow of Sukhbir son of Sh. Ramdhari in respect of land measuring 21 kanals 14 marlas (detailed in the head note of the plaint) is wrong illegal based on misrepresentation and fraud and further mutation No. 4921 attested on the basis of aforesaid Will in favour of defendant no.1 and Smt. Nirmala Devi mother of the defendants no. 2 and 3 is also illegal.

On notice, respondents/defendants appeared and filed their written statements. Trial Court vide order dated 24.2.2012 framed the following issues:

- 1. Whether the plaintiff is entitled to declaration to the effect that she is owner in joint possession of the suit property? OPP*
- 2. Whether the plaintiff is entitled to permanent injunction restraining the defendants from alienating the suit property? OPP*
- 3. Whether the Will dated 14.2.2007 was executed by deceased Ramdhari in favour of defendant no.1 and Nirmala devi widow of Sukhbir? OPD*

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.

The petitioner-plaintiff led evidence on issues no. 1 & 2 and closed the evidence on 3.11.2014. Thereafter the respondents-defendants led their evidence and examined DW-1 Ashok Kumar (respondent no.1-defendant no.1). In his evidence, he produced judgment dated 18.4.1998 as Ex. D-2 and the decree dated 18.4.1998 as Ex. D-3. Thereafter, the evidence of the respondents/defendants was closed on 10.3.2015 and the case was adjourned for rebuttal evidence.

Vide application dated 21.3.2015 (Annexure P-2), the petitioner sought to examine two witnesses. Vide order dated 13.8.2015 (Annexure P-4) the application was dismissed by observing that the petitioner-plaintiff had full knowledge of the revenue records and the Will dated 14.2.2007 as it is specifically mentioned in the plaint that the plaintiff approached the Halqa Patwari for obtaining the copies of jamabandi and mutations in June 2010. After framing of the issues on 24.2.2012, the petitioner-plaintiff closed her evidence on 3.11.2014. The petitioner-plaintiff had the full knowledge about the mutation and execution of the Will and hence, over a span of two years, she had ample opportunity to

examine the witnesses while leading her evidence in affirmative. No ground was made out to allow the application for summoning two witnesses and it was held that the petitioner-plaintiff failed to show that despite due diligence, she could not produce the additional evidence earlier and thus the petitioner-plaintiff cannot be allowed to delay the trial of the present suit or to fill up the lacuna in this case by moving such like applications as she had failed to prove her bona fide and due diligence in moving the application in hand.

Thereafter, the application dated 14.8.2015 (Annexure P-5) for leading additional evidence was moved. On 11.9.2015 vide the impugned order dated 11.9.2015 (Annexure P-7), this application was also dismissed. Through this application the petitioner-plaintiff wanted to place on record the factum of registration of the decree dated 18.4.1998 passed by the Court of R.K Yadav, the then Senior Civil Judge (JD) Gohana. The Court observed that the plaintiff was aware about the Will dated 14.2.2007 and mutation of decree titled Ram Dhari and others vs. Taken decided on 18.4.1998 as she exhibited both the documents in her evidence as Ex. P-1 and P-4. Hence, the Court dismissed the application by observing that the petitioner-plaintiff cannot be given a fresh opportunity to lead further evidence when it had opportunity to do so for the last two years. It was held that allowing such like applications would impede the cause of justice by protracting the litigation and by exposing the other to harassment which is last thing that the Court should allow. This application was dismissed with costs to the tune of 1500/-. This

judgment was passed by following the consistent view as held in a judgment passed in the case of **Bhure Lal vs. Suraj Bhan and otehrs 2011(2) LJR 788 (P&H)**, wherein it was held that when the evidence of plaintiff is closed and the defendant has led his evidence then the plaintiff cannot be allowed to lead evidence in rebuttal on the issues for which the burden to prove was upon him.

There is no infirmity or illegality passed in the order dated 13.8.2015 (Annexure P-4) passed by the Civil Judge (Junior Division), Gohana and order dated 9.9.2015 (Annexure P-7) passed by the Civil Judge (Junior Division) Gohana and they have been rightly passed by the Courts below. No ground is made out warranting interference of this Court in the impugned orders.

In view of all that has been discussed above, present revision petition is dismissed.

October 29, 2015
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(RITU BAHRI)
JUDGE