

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 6540 of 2015

Date of decision : October 05, 2015

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Nijar Mohammad and another

.....Petitioners

Versus

Smt. Giano Devi and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.K Bawa, Advocate for the petitioners.

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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

The petitioners-defendants no. 4 & 5 have come up in this revision petition against the order dated 23.9.2015 passed by the Civil Judge, Junior Division, Mewat vide which the application under Order 14 Rule 5 for framing additional issues was dismissed.

The respondents-plaintiffs filed a suit for declaration with consequential relief of permanent injunction and decree of possession to the effect that they are legal heirs of Sardara son of Ram Sahai son of Mamraj and mutation No.1772 dated 28.4.1985 in favour of performas respondents no. 3- 5/defendants no. 1 to 3 and their mother namely Sarti Devi is false, frivolous and fictitious.

As per the plaint father of the respondents no. 1 & 2-

plaintiffs and defendants no. 1 to 3/performa respondents was the owner in possession of the suit land. He had died intestate. In that condition, the land was to be inherited by his all legal heirs but petitioners-defendants no. 4 & 5 in collusion with defendants no. 1 to 3/performa respondents and with the intention to grab the land of the father of respondents no. 1 & 2-plaintiffs and defendants no. 1 to 3/performa respondents had succeeded in getting wrong false frivolous and fictitious mutation no. 1772 on 28.4.1985 in the name of performa respondents-defendants no. 1 to 3 and her mother namely Sarti Devi. Petitioners-defendants no. 4 & 5 to grab the land had got executed a false agreement to sell in favour of petitioner no.1/defendant no.4 on 6.11.1985 and one false G.P.A was also got executed in the name of petitioner no.2/defendant no.5 on dated 14.9.1988. On the basis of this false and forged G.P.A dated 14.9.1988 petitioners/defendants no. 4 & 5 had also got fabricated one false lease deed bearing Vasika No.998 dated 20.07.1995 in favour of petitioner no.1-defendant no.4 by petitioner no.2-defendant no.5 being the G.P.A holder of defendants no. 1 to 3 and their mother namely Sarti Devi. Petitioners/defendants no. 4 & 5 also got incorporated the said false lease deed in the revenue record vide mutation no. 2305 and as such the impugned lease deed bearing Vasika No.998 dated 20.7.1995 and its subsequent mutation no.2305 are quite illegal null and void.

Petitioners/defendants no. 4 & 5 filed their joint reply denying all the averments made by the plaintiffs. They further

contended that they were bona fide purchasers of the suit property and further plea was taken that the suit was hopelessly time barred. It was further pleaded that the mutation of inheritance vide mutation no.1772 was registered in favour of the legal representatives of said Sardara i.e Performa-respondents no. 3 to 5 and Smt. Sarti wife of Sardara and on the basis of this mutation only the petitioners-defendants no. 4 & 5 had agreed to purchase the property and perform respondents no. 3 to 5/defendants no. 1 to 3 and Smt. Sarti wife of Sardara had entered into an agreement to sell dated 6.11.1985 and further they had executed an GPA in favour of petitioner no.2/defendant no.5 and thereafter only the petitioner no.2/defendant no.5 got executed a registered lease deed for the period of 99 years in favour of petitioner no.1/defendant no.4.

Following issues were framed by the trial Court on 30.5.2014:

1. Whether the plaintiff is entitled to a decree of declaration on the grounds as alleged? OPP
2. If issue no.1 is proved, whether the plaintiff is entitled to a decree of permanent injunction on the grounds as alleged? OPP
3. Whether the defendant no. 4 & 5 are entitled to a decree of declaration and permanent injunction on the grounds as alleged in counter claim? OPD (COUNTER CLAIM)
4. Whether the suit of plaintiff is not

maintainable? OPD

5. Whether the plaintiff has no cause of action or

locus standi to file the present suit? OPD

6. Whether the plaintiff has concealed the true and material facts from the Court? OPD.

The case was fixed for evidence of parties. The evidence of defendants was closed by counsel for defendants vide his separate statement on 12.8.2015. Thereafter, case was adjourned thrice to 24.8.2015, 29.8.2015 and 7.9.2015 for rebuttal evidence. At the stage of rebuttal evidence, application for framing additional issues was filed. The procedure under Order 14 Rule 5 for framing additional issue is as under:

(5) POWER TO AMEND AND STRIKE OUT

ISSUES:-(1) *The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit and all such amendment or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.*

(2) *The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.*

The object of the above said rule is to enable a party to get additional issues framed at an appropriate time for the fair trial of the case. Once the evidence is recorded, additional issues cannot be framed to fill in the lacunae left in the evidence already lead. The Co-ordinate Bench of this Court in the case of ***Surinder Singh vs. Kuldeep Singh and others*** in **CR No. 4554 of 2015** decided on **22.7.2015** in similar circumstances has held that if both the parties have concluded their evidence and the case was fixed for rebuttal evidence, the application for framing of additional issues would amount to fulfill the lacunae left in the evidence already lead and would not fall within the purview of the object laid down in **Order 14 Rule 5 CPC**.

In the facts of the present case, at the stage of rebuttal evidence, the application for framing additional issues has been made by the petitioners-defendants no. 4 & 5 which has been rightly dismissed by the trial Court.

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

October 05, 2015
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(**RITU BAHRI**)
JUDGE