

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7176 of 2014

Date of decision: May 07, 2015.

Surjit Kaur

... **Petitioner**

v.

Ravi Kant Sharma etc.

... **Respondents**

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

Present: Shri Sudhir Pruthi, Advocate, for the petitioner.

Dr. Bharat Bhushan Parsoon, J. (Oral):

Vide this revision petition, order dated 8.7.2014 of the lower court vide which application of the petitioner-defendant for framing of additional issue was declined, is under challenge.

2. Plaintiff, respondent No.1 herein, had filed a suit for specific performance of the agreement dated 20.4.2005 in respect of the land measuring 64 kanal, detailed and described in the suit. The defendant had contested the suit claiming the agreement dated 4.10.2006 to have been procured in connivance with the scribe. Ground of fraud was taken. Despite tough resistance from the defendant, petitioner herein, the suit was decreed on 21.3.2012. The appeal was preferred by the defendant, petitioner herein, which was heard by Additional District Judge, Jalandhar. Vide his order dated 19.9.2013, setting aside the judgment and decree of the lower court, the suit was remanded to give opportunity to Smt. Surjit Kaur being legal heir of defendant Gurbachan Singh to prove her case as she had not been able to spell out her case to the lower court at the relevant time due to untimely death of her husband, when she had failed to come to India

though her tickets to visit India had already been reserved. In short, she was given opportunity to lead evidence to support her claim to defeat the claim propounded by the respondent-plaintiff. In a bid to overflow from the domain of the appellate court's order, defendant No.4 Smt. Surjit Kaur was examined on an affidavit which was found to be militating against the order of the appellate court. Sequel, the plaintiff had made an application for rejecting the affidavit of Smt. Surjit Kaur. Accepting the plea of the plaintiff, the defendant was called upon to file a fresh affidavit of her examination-in-chief as per directions of the appellate court.

3. Thereafter, the defendant, petitioner herein, has moved an application for amendment of the issues which was rejected.

4. Counsel for the petitioner-defendant has urged that without there being proper issues, the adjudication cannot be effectively made and would result in prejudice to the claim of the defendant. It is claimed that no new case is being set up; pleadings are not being changed; plea in written statement continues to be the same. Request for recasting the issues has been made even in the present revision petition.

5. Perusal of the paper book reveals that the agreement to sell forming foundation of the suit is of 20.5.2005. The suit was filed on 29.9.2006. Issues were framed on 3.8.2007. It was clearly mentioned on 3.8.2007 when the issues were framed that neither any other issue had been proposed nor had arisen. No objection in any case had been raised by the defendants regarding the issues framed on 3.8.2007. Even when the suit was remanded on 19.9.2013 by the first appellate court to the lower civil court, no such overture had been made by the defendants.

6. Perusal of the entire wrigmaroled history of the case reveals that the defendant had been successful in delaying and dilating the matter on one score or the other. Emergence of the petitioner as LR of the defendant is not to be construed by the court as an event bringing any tremorizing effect. Although pleadings remain the same and plea that the suit land is ancestral property of the defendants is already there, yet when no specific

issue was claimed by the defendants earlier, now said adventure cannot be allowed to be made by the LR of the defendant, petitioner herein. Effort of the defendant, petitioner herein is to further delay and dilate the matter on one score or the other. Impugned order of 8.7.2014 of the lower court is not only well written but is also elaborate. It has discussed all the facts and attending circumstances. When the LR of defendant No.4 is venturing even to dilute order dated 19.9.2013 of the first appellate court, such wide rope cannot be given to her.

7. Procedural law is hand-maid of justice. It lubricates the corrosive atmosphere. It cannot be allowed to be used as a handle to delay and dilate the matter. An unscrupulous litigant cannot be allowed to ride rough with the procedurecal law so as to make it subservient to his oblique motives. The suit is pending since 29.7.2006. The petitioner-defendant has been delaying decision of the suit on one pretext or the other.

8. Even otherwise, issue no.1 is wholesome and comprehensive one. Neither at the time of framing of issues on 3.8.2007 nor during the entire proceedings before the appellate court, any such point was ever raised by the defendant, petitioner herein. The application moved by the defendant, petitioner herein, is nothing but misuser of the process of the court for delaying and dilating the matter somehow or the other. Thus, even conduct of the defendant is pointedly to be mentioned as the same has been instrumental in derailing the proceedings.

9. No merit.
Dismissed.

May 07, 2015.
kadyan

[Dr. Bharat Bhushan Parsoon]
Judge