

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

Civil Revision No.7262 of 2014

Date of Decision: 24.08.2015

Joga Singh . . . Petitioner

Versus

Fateh Jang Bahadur Singh & others . . . Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioner.

Mr. Subhash Kumar, Advocate
for legal representatives of respondent No.1.

ARUN PALLI, J. (Oral)

Vide order being assailed, dated 07.10.2014, rendered by Civil Judge (Junior Division), Batala, the prayer of petitioner/plaintiff for framing additional issues under Order 14 Rule 5 of the Code of Civil Procedure has since been rejected.

In a suit filed by the petitioner/plaintiff, he prayed for a declaration that he was the owner in possession of the land measuring 11 Kanals 11 Marlas bearing *Khasra* Nos.12R/16/1/1, 25/2, 13R/21/2, situated at Village Riali Khurd, *Had Bast* No.300, Tehsil Batala and the decree dated 08.09.2008 rendered by Civil Judge (Junior Division), Batala was not binding on the rights of the

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plaintiff since he was not a party to the said proceedings. It was maintained that the suit land was owned and possessed by Balbir Singh i.e. father of the respondents/defendants, who sold the same to defendant No.2 i.e. Jagjit Singh, who in turn sold it to the petitioner/plaintiff vide registered sale deed dated 27.03.2006. Subsequently, defendant No.1 filed a suit against defendants No.2 to 5 claiming the suit property to be Joint Hindu Family coparcenary and he was held to be co-owner/co-sharer to the extent of 6/15 share vide judgment and decree dated 08.09.2008.

In defence, it was pleaded *inter-alia* by defendant No.1 that the suit land as also the other properties were ancestral Joint Hindu Family Coparcenary properties, belonging to the coparcenary constituted by Balbir Singh being the *Karta* and his sons Jagjit Singh and defendant Fateh Jang Bahadur Singh. And that being so, it was maintained that Balbir Singh could not sell the suit land in favour of his son i.e. defendant No.2. Likewise, defendant No.2 could not sell the suit property to the plaintiff.

It was in the wake of this background, petitioner/plaintiff had prayed for framing the following additional issues:-

1. Whether the defendants have obtained exclusive decree with the connivance with each other which is null and void and not binding on the rights of the plaintiff? OPP.
2. Whether the suit property is the ancestral Joint Hindu Family Coparcenary Property? OPD.

However, learned trial Court, vide order being assailed, declined the prayer and concluded as thus:-

“The plaintiff had filed the present suit for declaration that the plaintiff is absolute owner of the land as mentioned in the head note of the plaint and also challenged the decree dated 8.9.2008 passed by the Court of Sh. Raman Kumar, Civil Judge (Jr. Divn.), Batala and moreover the issue has already been framed on 16.10.2012 in which the first issue regarding the entitlement for declaration and the onus is already upon the plaintiff, so when the plaintiff had challenged the decree dated 8.9.2008 passed by the Court of Sh. Raman Kumar, Civil Judge (Jr. Divn.), Batala, then there is no need to frame issue No.1 and so far as the issue No.2 is concerned the plaintiff has placed on record the alleged decree dated 8.9.2008 passed by the Court of Sh. Raman Kumar, Civil Judge (Jr. Divn.), Batala in which the present defendant No.1 was the plaintiff in that decree and he had alleged in the plaint that he along with defendant constitute the Joint Hindu Family Coparcenary, so accordingly, there is also no need to frame the issue No.2 as alleged as the finding regarding the issue No.2 had already been given by Sh. Raman Kumar, Civil Judge (Jr. Divn.), Batala, in decree dated 8.9.2008 and moreover the plaintiff had to prove its own case, accordingly, the present application is not tenable and same is without any merits, as such the same is dismissed as no order to costs.

Case is adjourned to 10.10.2014 for final arguments.”

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner/plaintiff submits that proposed issue No.1 need not be framed since the decree dated 08.09.2008 is already being assailed in the suit. But as regards issue No.2, he submits that the said issue is extremely crucial in context of the dispute between the parties and thus ought to have been framed. Further, observation recorded by the trial Court that as a finding in this regard has since already been recorded in the decree dated 08.09.2008, therefore, there was hardly any need to ever frame the said issue, was wholly erroneous.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the present petition deserves to succeed, for the reasons that are being recorded hereinafter.

Concededly, in a suit filed by the petitioner/plaintiff, he has prayed for declaration that he is the owner in possession of a land measuring 11 Kanals 11 Marlas pursuant to the sale deed dated 27.03.2006 executed by Jagjit Singh (defendant No.2), who in turn had purchased the same from his father namely; Balbir Singh. Plaintiff has also assailed the decree dated 08.09.2008, rendered in Civil Suit No.363, filed by defendant No.1 i.e. Fateh Jang Bahadur Singh, against his brother Jagjit Singh and sisters, vide which he was held to be a co-owner in joint possession having 6/15 share in the suit property. Apparently, in the said suit, defendant No.1 had claimed the suit property to be a Joint Hindu Family Coparcenary. Likewise, in the written statement filed by

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defendant No.1 in the present suit, he maintains that the suit property being Joint Hindu Family Coparcenary was inalienable.

Ex-facie, the issue as regards the nature and character of the suit property assumes significance in context of the respective claims of the parties. Further, insofar as the observations; ***“so accordingly, there is also no need to frame the issue No.2 as alleged as the finding regarding the issue No.2 had already been given by Sh. Raman Kumar, Civil Judge (Jr. Divn.), Batala, in decree dated 8.9.2008”***, apparently, the trial Court gravely erred as it virtually concluded that since a finding in respect to the nature of the property being ancestral was already rendered in the other suit, the issue was no longer open for determination. Or as if the said finding would operate as resjudicata. Apparently, the approach and the manner in which the trial Court perceived the matter is erroneous. Petitioner/plaintiff was not a party to the said suit and the decree dated 08.09.2008. Secondly, no such issue as regards nature of the suit property was even framed in the said proceedings. The decree dated 08.09.2008 was an *ex-parte* decree obtained by defendant No.1. That being so, how could it be said that since a finding with respect to the nature of the property had already been rendered, therefore, there was hardly any occasion to even frame proposed issue No.2.

Consequently, the revision petition is partly accepted and as a consequence, the order dated 07.10.2004 is set aside.

And the trial Court is directed to frame the following issue:-

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“Whether the suit property is the ancestral Joint Hindu Family Coparcenary Property? OPD”

In the wake of this position, learned counsel for respondent No.1 submits that he would only require one effective opportunity to adduce his evidence *viz-a-viz* the proposed issue No.2, on the date that shall be fixed by the trial Court. Likewise, learned counsel for the petitioner also maintains that he too would avail only one opportunity to lead rebuttal evidence, if any.

Parties, through their counsel, are directed to appear before the trial Court on 01.10.2015.

[ARUN PALLI]
JUDGE

24.08.2015
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Referred to Reporter