

In the High Court of Punjab and Haryana at Chandigarh

CR No. 785 of 2014 (O&M)
Date of decision: 18.9.2015

Shiv Lal

.....Petitioner

Versus

Sheo Bai and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.N.S.Shekhawat , Advocate,
for the appellant.

Mr.A.P.Bhandari, Advocate
for respondents No.1 to 4.

- 1. Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J.

1. Petitioner has assailed the order dated 11.10.2013, vide which an application under Order 14 Rule 3 and 5 CPC, framing additional issues and for striking out unnecessary issues has been dismissed.

2. Defendant No.1 has filed this revision petition with the plea that plaintiffs/ respondents No.1 to 4 filed a suit for declaration to the effect that Will dated 5.9.2008, Rapat Roznamcha No.115 dated 30.11.2008 and mutation No.811 entered and sanctioned on the basis of Will are fake, forged and

fabricated documents and have been procured on the basis of collusion with each other at the back of the plaintiffs. They sought joint possession of the land as co-sharers to the extent of 4/8th share and accordingly prayed for permanent injunction.

3. Petitioner-defendant No.1 filed his written statement pleading therein that Will dated 5.9.2008 was executed by Mangat Ram after revoking earlier Will dated 6.7.2007. Maintainability of the suit has been questioned. Collusion between plaintiffs, defendant No.2 and 4 has been highlighted in the written statement.

4. Defendant No.2/ respondent No.5 also filed written statement and counter claim. This defendant made admission qua several facts and pleaded that the impugned Will is illegal, null and void. In the counter claim, defendant No.2 instead of making claim against the plaintiffs, has claimed major relief against defendant No.1. Plaintiffs have asserted that in fact, it is the plaintiffs, who had installed defendant No.2 to seek relief in the counter claim for and on behalf of the plaintiffs.

5. Learned counsel for the petitioner states that counter claim vis-à-vis defendant No.1 is not maintainable. In support of his contention, learned counsel placed reliance on Som Pal vs. Kashmiri Lal and others (2015-3) PLR Vol.CLXXIX 706.

6. Original issues were framed to the following effect:-

1.Whether the Will dated 5.9.2008 executed by

deceased Mangat and subsequent Rapat Roznamcha bearing No. 115 and mutation No.811 entered and sanctioned on its basis are illegal, null and void and liable to be set aside on the ground mentioned in the plaint and plaintiffs are co-sharer in the suit land fully described in para No.1 of the suit land fully described in para No.1 of the plaint to the extent of 4/8th share ?
OPP

2. If issue No.1 is proved whether plaintiff is entitled to decree for permanent injunction as prayed for ? OPP

3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the Civil court has no jurisdiction to entertain and try the present suit ? OPD

5. Whether suit is barred by limitation ? OPD

6. Whether defendant No.2 is owner in possession of land measuring 22 kanals 19 marlas vide registered Will executed by deceased Mangat Ram on 7.6.2007 ? OPD

7. Whether defendant No.2 is owner in possession of 1/8th share of 45 kanals 18 marlas of agricultural land bearing khewat o.133, khata No.141, Rect. No.18, killa Nos. 15/2 (7-12), 16 (7-7), Rect.No.19 killa Nos. 11 (8-0), 12 (8-0), 13(4-0), 13/2/1 (3-12) and 20 (7-7),

situated in the revenue estate of village Sanpka, Tehsil Farrukh Nagar District Gurgaon vide Fard Jamabandi for the year 2005-06, by virtue of succession/ inheritance fully detailed in para No.1 of the counter claim ? OPD

8. If issues No.6 and 7 are proved whether defendants No.2 is entitled to decree for permanent injunction as prayed for ? OPD

9. Relief.”

7. Petitioner-defendant No.1 seeks additional issues to be framed and at the same time seeks deletion of issues No.6 to 8. During the course of arguments, a consensus has been reached between the parties qua the issue of maintainability of the suit, which according to the petitioner, should cover consideration of Order 4 Rule 1 CPC and Order 7 Rule 11 (e) CPC, while considering issue of maintainability i.e. issue No.3 by the trial Court. Defendant No.2/ respondent No.5 is the counter claimant. Issues No.6, 7 and 8 have fastened *onus probandi* on defendant No.2. Issue No.8 talks about decree of permanent injunction in favour of defendant No.2/ counter claimant in the event of proving issues No.6 and 7. In this way counter claim will be decreed against defendant No.1 at the instance of defendant No.2 which is not sustainable in law.

Since plaintiffs and defendant No.2 are not at issue in view of

admission made by defendant No.2 in the context of issues No.6 to 8, therefore, it would be just and appropriate to delete issues No.6 to 8 and made them out of consideration.

8. So far as issue regarding maintainability of the suit is concerned, this issue can cover considerations of Order 4 Rule 1 CPC and Order 7 Rule 11 (e) CPC at the time of decision by the trial Court.

9. In the light of aforesaid, this petition is disposed of. Resultantly, issues No.6 to 8 are ordered to be deleted and due consideration shall be made to the provisions of Order 4 Rule 1 CPC and Order 7 Rule 11 (e) at the time of deciding issue of maintainability i.e. issue No.3 by the trial Court.

(RAJ MOHAN SINGH)
JUDGE

September 18, 2015
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