

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7910 of 2014 (O&M)

Date of decision: 07.05.2015

Inderpreet Singh

... Petitioner

versus

Amarpreet Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. B.S. Bedi, Advocate for the petitioner.

Ms. Alka Sarin, Advocate for respondent No.1.

Mr. Pirthi Singh Chauhan, Advocate for respondent No.2.

K.Kannan, J.

The revision is against the order allowing the plaintiff to give evidence after the defendants had also given evidence after the plaintiff had initially examined himself. The court had allowed for such evidence to be brought and the revision is against the said order.

The suit was filed claiming that the plaintiff and the 2nd defendant were only legal heirs to the estate of their natural mother on a plea that the 1st defendant-petitioner was also biological brother but being given in adoption to one Gurbachan Singh, he was not entitled to claim any share in the property. The defence was that he was never given any adoption and he continued to be the son of their biological parents and he was also entitled to the share.

On the basis of such pleadings, I notice that the issue had not been properly framed, but, if the Court was considering whether the plaintiff is entitled to the right as claimed, failed to frame an appropriate issue of whether the 1st defendant was the adopted son of Gurbachan Singh in the manner contended by the plaintiff with the onus specifically cast on the plaintiff. The onus of proof of any fact

which a person wants to rely on for claiming right will be only on the person who asserts for the existence of such a fact, in terms of Section 103 of the Evidence Act. There cannot, therefore, be any objection that the issue of whether the first defendant was the adopted son of Gurbachan Singh as contended by the plaintiff ought to have been proved only by the plaintiff. I would notice that inartistic framing of issues themselves have contributed to the appropriate evidence being not brought at the relevant time and I therefore direct an additional issue to be framed as below, even though the right was claimed as rebuttal evidence.

“Whether the 1st defendant is the adopted son of Gurbachan Singh as contended by the plaintiff and hence not entitled to a share to the estate of the natural parents. (OPP).”

I would take the opportunity granted by the Court below as additional evidence and also give liberty to the defendant to give any evidence in rebuttal if he chooses to do. The order already passed is sustained for it would best subserve the justice if failed opportunities are given to the persons on proper drafting of issue. The revision petition is dismissed but with above observations.

The counsel places before me several judgments and wants the Court to refer to them as laying down the law that a party cannot be permitted to give rebuttal evidence on the issue where affirmative evidence is bound to be given by the parties. I take them as well established but I have anchored my order not for such evidence only by way of additional evidence and not as rebuttal evidence and I will therefore find no purpose in referring to them.

(K.KANNAN)
JUDGE

07.05.2015

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