

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

CR-8813-2014 (O&M)

Date of decision-01.12.2015

GURSHARAN SINGH

...Petitioner

VS

SARAVJOT SINGH & ORS.

...Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. T.N Sarup, Advocate
for the petitioner.

Mr. B.S Sudan, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J (Oral)

[1] Petitioner has assailed order dated 18.11.2014 passed by Civil Judge (Junior Division) Batala vide which application under Order 14 Rule 5 read with Section 151 CPC for framing additional issues has been rejected. The proposed additional issues which were sought to be framed are as under:-

1. Whether the suit land is the ancestral Joint Hindu Property and Sh. Teja Singh is the Karta of the Joint Hindu Family and that the plaintiff is the coparcener of the suit land? OPP
2. Whether the Sale deed dated 01.10.2008 executed by Teja Singh in favour of defendant No.2 is illegal, null and void being without the consent of the coparceners and without any legal necessity nor an act of good management and not binding upon the right and interest of the plaintiff and is liable to be set aside?

[2] The original issues framed on the basis of pleadings of the parties are also reproduced here as under:-

1. Whether the plaintiff is entitled, for relief of declaration as prayed in the suit? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the plaintiff has no cause of action? OPD
4. Whether the plaintiff is not in actual and physical possession over the suit property? OPD
5. Whether the description of the suit, is incorrect and against the revenue record? OPD
6. Relief.

At the time of issuance of notice of motion this Court passed the following order on 24.12.2014:-

“Submits that application for framing of the issues has wrongly been declined by the Trial Court on the ground that the plaintiff had already adduced the evidence. It is submitted that counsel for the plaintiff had given a statement that he had no objection (Annexure P5) and the issues which were framed by the Court on 01.11.2013 were not specific as the dispute inter se the parties is whether the suit land is ancestral and joint Hindu property and whether Teja Singh was the Karta of the same and whether the plaintiff was coparcener. Similarly, the factum of alienation vide the sale deed dated 01.10.2008, executed by Teja Singh, is also subject matter of challenge and whether there was any legal necessity or not and whether it was an act of good management, was subject matter of consideration. In such circumstances, the impugned order is not justified.

Notice of motion for 14.01.2015, to respondent No.1 only.

Notice re:stay, as well.”

[3] Original issue No.1 appears to be wide enough to cover in its ambit all the pleas arising out of nature of property and the grounds on which declaration is being sought by the plaintiff. However, the issue being not specific in nature requires to be further elaborated to put concerned parties to exact and proper issue so as to facilitate them to lead evidence in consonance with the requirement thereto. The respondent while appearing before the trial Court as well as before this Court has shown his concurrence to the proposed framing of additional issues, but the trial Court declined the same on the ground that the same will unnecessarily delay the proceedings of the suit.

[4] I have considered the controversy. In order to facilitate the Court to arrive at just conclusion in the context of declaration that whether plaintiff is entitled to the relief thereon or not, nature of property being ancestral Joint Hindu Family property in the hands of Teja Singh is required to be proved with reference to evidence.

[5] The framing of issue will certainly pin point the area in which evidence is required to be led. Similarly, qua issue No.2 also the sale deed executed by Teja Singh in favour of defendant No.2 is sought to be declared illegal, null and void as the specific evidence is required in this context as well.

[6] In considered opinion of this Court, the proposed issues as sought by the defendants do not run counter to any of the original issues rather these issues are in consonance with the issue No.1 with a further elaboration, requiring the parties to lead specific evidence so as to facilitate the Court to dispose of the controversy in an effective manner.

[7] Learned counsel for the respondent has shown his concurrence for setting aside the order dated 18.11.2014. Resultantly, this revision petition is allowed.

[8] Trial Court will make every endeavour to conclude the suit after providing necessary opportunities to the parties to lead evidence on the additional issues as expeditiously as possible.

Disposed of.

(RAJ MOHAN SINGH)
JUDGE

December 01, 2015

vanita