

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

**CR No.1399 of 2014(O&M)
Date of Decision:15.11.2016**

Baljit Singh

.....Petitioner

Versus

Ajit Singh and others

.....Respondents

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

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

RAJ MOHAN SINGH, J.(Oral)

[1]. In this revision petition, petitioner has assailed order dated 10.02.2014 passed by Additional Civil Judge (Senior Division), Batala vide which application under Order 14 Rule 5 CPC filed by the plaintiffs for recasting of issues was dismissed.

[2]. Plaintiff filed a suit for declaration on the basis of Will dated 18.09.2000 executed by Makhan Singh son of Harnam Singh son of Kesar Singh.

[3]. Suit was contested by defendants No.2 to 6.

[4]. After completion of pleadings of the parties, issues were framed on 09.12.2004 to the following effect:-

“1. Whether Kesar Singh executed a legal valid will dated 18.09.2000 in favour of plaintiff and defendant No.1? OPP

2. Whether plaintiffs are entitled for declaration as prayed for? OPP

3. Whether Makhan Singh has executed a fresh Will dated 29.12.2000 in favour of Dalip Kaur and defendant No.2? OPD

4. Whether Makhan Singh had executed power of attorney dated 24.08.2001 in favour of defendant No.5? OPD

5. If issue No.4 is proved, whether defendant No.5 has sold the land measuring 12 kanals 18 marlas in favour of defendant No.6 vide sale deed dated 25.10.2001? OPP

6. Whether suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD

7. Whether plaintiff has no cause of action to file the present suit? OPD

8. Relief.”

[5]. Thereafter, suit was amended at the instance of plaintiffs. Defendant No.1-Ajit Singh was transposed as plaintiff No.3. Necessary amendment was done in the pleadings as well. Amended written statement was filed by the contesting defendants and on completion of pleadings, following issues were framed:-

“1. Whether the deceased Makhan Singh executed a valid and registered Will dated

18.09.2000 in favour of the plaintiff? OPP

2. Whether the plaintiffs are entitled to declaration as prayed for? OPP

3. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP

4. Whether the plaintiffs have got no locus standi to file the present suit? OPD

5. Whether no cause of action has arisen to the plaintiffs to file the present suit? OPD

6. Relief.”

[6]. On seeing the anomaly viz-a-viz nature of issues framed on both the occasions, applicants-plaintiffs sought to include some of the issues earlier framed in the tally of issues to be tried by the Civil Court. Plaintiffs highlighted that 4 issues were left unattended while framing of issues on amendment, those issues are as under:-

“(i) Whether Makhan Singh has executed a fresh will dated 29.12.2000 in favour of Dalip Kaur and defendant No.1?OPD No.4 to 6.

(ii) Whether Makhan Singh had executed Power of Attorney dated 24.08.2001 in favour of defendant No.4? OPD 4 and 5.

(iii) If the above issue(ii) is proved, whether the defendant No.5 has sold the land measuring 12 kanals 18 marlas in favour of defendant No.5 vide sale deed dated 25.10.2001?OPD 4 and 5.

(iv) Whether suit of the plaintiff is not properly valued for the purpose of court fee and

jurisdiction? OPD”

Additional issue was also sought to be framed i.e.

“Whether the defendant No.6-Dalip Kaur is the widow of Makhan Singh deceased? OPD 6.”

[7]. Contesting defendants filed a reply to the application under Order 14 Rule 5 CPC showing their no objection, if the issues are allowed to be recasted.

[8]. Learned counsel for the petitioner submitted that all the necessary issues are to be framed which arise from the pleadings of the parties. At the time of issuing notice of motion, this Court passed the following order on 25.02.2014:-

“Under the original issues framed, evidence was led by the parties. Due to certain supervening events, the plaintiffs successfully amended the plaint to which a fresh written statement and replication were filed. This led to framing of new set of issues in the year 2011. Learned counsel contends that the earlier issues framed, barring doubt on issue no.1 with respect to the name of Kesar Singh, have been subjected to some of the plaintiffs' evidence and in the altered situation, it cannot be said that issues cast once have become non-existent. There is also no reason given by the learned trial court to bring about the change. Presently, the entire evidence has been led on both sets of issues, except rebuttal evidence. The learned trial court has

dismissed the application under Order 14 Rule 5 of the CPC against which this petition has been filed.

In order to sort out the mess, let notice of motion be issued returnable on 1.4.2014.

In the meantime, the learned trial court will refrain from passing final judgment.”

[9]. Thereafter, at one point of time, Mr. K.S. Kahlon, Advocate appeared on behalf of respondents No.2 and 5 to 7. Respondents No.1 and 4 were stated to be dead. Learned counsel for the petitioner made a statement that respondents No.1 and 8 were not the contesting respondents. Service qua respondents No.2, 5 to 7 was complete. Respondent No.3 was ordered to be served on furnishing fresh address. Legal heirs of respondent No.4 were also required to be brought on record. Thereafter, respondent No.3 was duly served, but none appeared on his behalf. As such, respondent No.3 was proceeded against ex parte. Since respondent No.4 was already ex parte before the trial Court, therefore on that account, legal representatives of deceased-respondent No.4 were not required to be brought on record. Service qua respondent No.4 was ordered to be dispensed with.

[10]. Mr. K.S. Kahlon, Advocate was allowed to be withdrawn from the case on account of no instructions from respondents No.2 and 5 to 7. Therefore, notices were issued to them. Later

on, they were duly served, except respondent No.2 who had refused to accept the notice. Service qua him was deemed to be complete. The case was adjourned for arguments. As on date, none has appeared on behalf of respondents. Respondents are accordingly proceeded against ex parte in this revision petition.

[11]. Since in the original issues so framed on 09.12.2004, issues which are sought to be recasted by way of application under Order 14 Rule 5 CPC are necessary. Additional issue as per application is also projected to be a necessary issue in the context that whether defendant No.6-Dalip Kaur is the widow of Makhan Singh deceased or not. The onus is on defendant No.6 to prove the said issue. The framing of these additional issues in considered opinion of this Court arise for consideration particularly in view of framing of original issues on 09.12.2004 and framing of issues on account of amendment in the pleadings in the year 2011.

[12]. In view of facts and circumstances of the case, even if, both the parties knew the case of each other, framing of these issues would definitely advance cause of justice and would enable the Court to decide the controversy in its right perspective.

[13]. In view of aforesaid, this revision petition is allowed. Impugned order dated 10.02.2014 passed by Additional Civil

Judge (Senior Division), Batala is set aside. Let follow up action be taken by the trial Court in accordance with law.

15.11.2016

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No