

117

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

Civil Revision No.3828 of 2016 (O&M)

Date of Decision: 11.08.2016

Harbans Kaur

.....Petitioner

Vs

Surjit Kaur and others

.....Respondents

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

Present: Mr. Saqib Ali Khan Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 25.01.2016 passed by Civil Judge (Jr. Divn.) Malerkotla whereby the application for granting permission to the petitioner for filing the written statement was declined.

[2]. Petitioner who is a defendant No.1 in the suit, got recorded her statement on 07.03.2011 before the trial Court, admitting the claim of the plaintiff. It was alleged that at the time of recording such statement, petitioner was under the impression that the plaintiff had filed suit for her own land that would not affect the share of the petitioner being defendant No.1 therein. Thereafter petitioner turned around and claimed that in

fact her entitlement was to suffer on account of no contest by her in the suit and ultimately prayed for filing of the written statement.

[3]. Petitioner got her statement recorded willfully which was thumb marked by her and counter-signed by her lawyer keeping in view the nature of litigation pending in the trial Court. Plaintiff filed a suit for declaration in respect of her being owner in possession of 1/14th share out of total land measuring 25 *Bighas 3 Biswas 12 Biswasis* and in alternative plaintiff sought relief of joint possession. There were seven claimants to the aforementioned land i.e. the plaintiff, petitioner, Gurbax Singh, Gurdev Singh, Amarjeet Kaur and Kirpal Singh all sons and daughter of Gajjan Singh.

[4]. Bare perusal of the *jamabandi* for the year 1981-82 would reveal that all the aforesaid persons had 6/7th share in total land measuring 25 *Bighas 3 Biswas 12 Biswasis*. In other words, each of the aforesaid persons would have 1/7th share in the land in question. As per decree dated 27.05.1985, plaintiff gave half share to Gurdev Singh that would make her entitlement to the extent of 1/14th share in the land.

[5]. Accordingly, plaintiff made her claim for declaration and in alternative for joint possession of her share only to the extent

of 1/14th share and that would not affect the right of other claimants including the petitioner in any manner. That was the reason at the very inception of the proceedings, defendant No.1/petitioner and her lawyer thought it appropriate not to contest the suit as no adverse claim was involved at the instance of the plaintiff. The change of mind at a subsequent stage for contesting the suit by filing written statement in considered opinion of this Court was not permissible, even in law or on facts of the case.

[6]. In view of above, this Court does not find any illegality or impropriety in the impugned order passed by the Civil Judge (Jr. Divn.). The revision petition is accordingly dismissed.

August 11, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No