

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 453 of 2014(O&M)

Date of Decision:23.2.2016.

Roshan Ali

---Petitioner

vs.

Mehar Din and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. A.S.Manaise, Advocate
for the petitioner

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition lays challenge to order dated 10.12.2013 passed by the Additional Civil Judge (Senior Division), Naraingarh, whereby the application filed by the petitioner/defendant under Order 39 Rule 7 (c) read with Section 151 of the Code of Civil Procedure (in short “CPC”), has been dismissed.

Counsel for the petitioner contends that Mehar Din respondent No. 1 has filed a suit for declaration claiming his ownership in possession to the extent of 1/5th share in the land, detailed in the head note of the plaint,

The petitioner filed an application for directing the respondent to submit himself for DNA test or any other test required to ascertain his paternity for just decision of the case. The application has been dismissed by the trial court without appreciating that DNA labelling of the respondent when compared with DNA of the petitioner and other children of Mauju Din would facilitate just decision qua right of inheritance to the estate left behind by Mauju Din.

Before advertng to the submissions made by counsel for the petitioner, it is necessary to recall the provisions of Order 39 Rule 7 CPC which deal with detention, preservation, inspection, etc., of subject matter of suit. Clause (c) of Rule 7(1) of Order 39, relevant in the present context, reads as follows:

(C) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or

expedient for the purpose of obtaining full information or evidence.”

A bare reading of Rule 7 leaves no manner of doubt that the said provision deals with detention, preservation, inspection of any property subject matter of such suit or as to which any question may arise therein. Respondent No. 1 cannot be said to be subject matter of the suit, to invoke the provisions of Rule 7 for the purpose sought to be achieved. The application filed by the petitioner is misconceived and has been rightly rejected by the trial court.

The learned trial court, in para 2 of the impugned order, has taken note that respondent No. 1 has already concluded his evidence and the defendants after availing 10 effective opportunities including last opportunity filed the application with an ulterior motive to serve.

In the given circumstances of the case when examined in the light of observations made by the learned trial court, it can be safely held that the application filed by the petitioner is nothing short of abuse of process of law.

For the foregoing reasons, the petition is dismissed

(Rekha Mittal)
Judge

23.2.2016
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