

Civil Revision No.5625 of 2013

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5625 of 2013

Date of Decision:03.08.2016

Kulwant Kaur

---Petitioner

vs.

Hardev Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Amit Jain, Advocate
for the petitioner
Mr. Ajaivir Singh, Advocate
for the respondents

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 directs challenge against order dated 23.8.2013 passed by the Additional Civil Judge (Senior Division), Jalandhar

whereby the respondents/defendants have been allowed to adduce additional evidence on the basis of application (Annexure P-1) filed under Section 151 of the Code of Civil Procedure (in short “CPC”).

Kulwant Kaur daughter of Sh. Saudagar Singh (since deceased) has filed a suit for declaration against her brother and his wife claiming half share in the property measuring 42 kanals 5 marlas situated at village Sanghowal, Tehsil and District Nakodar District Jalandhar and further challenge has been laid to mutation sanctioned in favour of deceased Saudagar Singh qua inheritance of Smt. Mohinder Kaur and mutation No. 3802 in favour of Raminder Kaur, defendant No. 2 qua inheritance of Sh. Saudagar Singh. The petitioner has claimed half share in the suit property on the basis of natural succession to the estate of Smt. Mohinder Kaur, her mother.

The respondents filed instant application to examine Sh. K.L.Dua, Advocate by way of additional evidence. It is averred that Kulwant Kaur through Sh. K.L.Dua, Advocate appeared in civil suit No. 608 of 1988 titled “Saudagar Singh vs. Major Hardev Singh and Kulwant Kaur”. She signed power of attorney in favour of Sh. K.L.Dua, Advocate

and also signed the written statement but has refused having engaged Sh K.L.Dua as a counsel and denied her signatures on the power of attorney and the written statement. It is further averred that evidence sought to be adduced is essential for just decision of the case.

The learned trial court after having heard counsel for the parties and in the light of respective pleadings, has allowed the application by holding that knowledge of the defendants as regards the additional evidence and delay in filing the application notwithstanding, given the nature of litigation between the parties, it is in the interest of justice that the suit should be decided after taking into consideration all such evidence which could have a bearing on outcome of the case on merits.

Counsel for the petitioner has assailed the impugned order primarily on the ground that there is no explanation submitted by the respondents/defendants as to why evidence sought to be adduced by way of additional evidence could not be brought on record at an appropriate stage of the proceedings despite exercise of due diligence. To substantiate his contention, counsel has submitted that in the written statement filed by the defendants, in para 2 on merit, there is reference to civil suit No. 608 of

1988 titled “Saudagar Singh vs. Major Hardev Singh and Kulwant Kaur” and the said suit having been decreed by the Sub Judge IInd Class, Jalandhar vide judgment and decree dated 4.3.1989 and photocopy of the judgment was attached with the written statement. It is further argued that perusal of the judgment dated 4.3.1989 would make it manifest that it contains reference to filing of written statement by Kulwant Kaur and thereafter her having been proceeded against ex parte. It is vehemently argued that in absence of any tangible and satisfactory explanation that either the additional evidence was beyond control of the respondents/defendants much less their failure to adduce evidence was despite exercise of due diligence, the trial court has committed a serious error rather illegality in allowing the application filed by the defendants with an intent to delay the proceedings when otherwise, the defendants availed several opportunities to adduce evidence with effect from 22.8.2012 onwards till they closed their evidence by making a statement on 8.11.2012.

Counsel for the respondents, on the other hand, has supported the impugned order with the submissions that as evidence sought to be adduced has a material bearing on just decision of the case, the learned trial

court has rightly held that notwithstanding knowledge of the defendants and delay in filing the application, the additional evidence is required to be brought on record that has material bearing on outcome of the case on merits. It is further argued that interests of the petitioner have been adequately protected as she would be entitled to cross examine the witness and further adduce evidence in rebuttal, therefore, no prejudice would be caused to the petitioner by allowing the respondents to adduce additional evidence.

I have heard counsel for the parties, perused the paper book and various documents, a part of records of the trial court made available during the course of hearing.

Smt. Kulwant Kaur has staked her claim to half share in the suit property primarily on the ground that mutation sanctioned in favour of Sh. Saudagar Singh husband of Mohinder Kaur in respect of property left behind by Smt. Mohinder Kaur (mother of Kulwant Kaur) is wrong and unlawful and the petitioner being one of the class -I heirs of Smt. Mohinder Kaur is entitled to half share of the suit property on the basis of natural succession whereas the remaining half share would be inherited by her

brother Sh. Hardev Singh. Counsel for the petitioner has not disputed when otherwise it is a matter of record that Saudagar Singh filed civil suit No. 608 of 1988 captioned “Saudagar Singh vs. Major Hardev Singh and Kulwant Kaur” that was decreed by the civil court vide judgment and decree dated 4.3.1989. Perusal of the judgment passed in the said case would make it evident that the same makes reference to filing of written statement by Kulwant Kaur and thereafter she being proceeded against ex parte. Kulwant Kaur has denied that she engaged Sh. K.L.Dua, Advocate in those proceedings, filed the written statement, may be, to assert that she did not know about sanction of mutation qua estate of Smt. Mohinder Kaur in favour of Sh. Saudagar Singh at any time prior to 19.11.2007 when she obtained certified copies of jamabandies for the years 1974-75 till 2004-05. The trial court has rightly held that the application filed by the respondents/defendants may not satisfy the requirements of evidence either not to their knowledge or could not be adduced despite exercise of due diligence but still as the evidence has a material bearing on the outcome of the litigation, the respondents are entitled to adduce the additional evidence. Technicalities of procedure cannot be allowed to be pitted against

substantial justice. Additional evidence can be allowed at any stage of the proceedings. In the given facts and circumstance, the discretion exercised by the trial court holding in favour of the respondents is neither arbitrary nor perverse or absurd. Conversely, the trial court has exercised its discretion in order to serve the interest of substantial justice. That being so, I do not find any reason to interfere in the impugned order.

For the foregoing reasons, the petition fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

03.08.2016
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