

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

**CR No.6713 of 2012
Decided on: 19.02.2016**

Niranjan Singh and others

....Petitioners

Versus

Jit Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Ravinder Sharma, Advocate
for the petitioners.

Ms. Malkiat Mann, Advocate
for respondents No.4, 6 and 7.

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

REKHA MITTAL J. (Oral)

The present petition has been directed against the order dated 09.10.2012 (Annexure P-5) passed by the Additional District Judge, Sangrur, dismissing the application filed by the petitioners under Order 14 Rule 5 of the Code of Civil Procedure for framing of additional issues.

Counsel for the petitioners contends that Bir Singh son of Narain Singh was the owner in possession of the suit land measuring 14 kanals 12 marlas situated in village Kamalpur, Tehsil

Sunam, District Sangrur. After death of Narain Singh, mother of Bir Singh married to Dalel Singh and Bir Singh was adopted by Dalel Singh. Bir Singh has died in the year 1978. The petitioners are the legal heirs of Bir Singh son of Narain Singh. The respondents fraudulently got mutated the suit land in their name as they are neither the legal heirs nor related to Bir Singh in any manner.

The suit filed by the petitioners was dismissed by the trial Court but the judgment and decree passed by the trial Court was set-aside by the First Appellate Court and the case was remanded to the trial Court for decision afresh vide order dated 09.01.2009 (Annexure P-1).

The petitioners filed an application for framing of additional issues but the same was dismissed. The trial Court dismissed the suit vide judgment dated 08.02.2010 (Annexure P-2). During pendency of appeal, the petitioners filed an application (Annexure P-3) for framing of additional issues which came to be dismissed by the Appellate Court vide impugned order (Annexure P-5). It has been argued that framing of additional issues as proposed is necessary as the Court is enjoined upon to frame an issue on each disputed question of fact or law, in view of the provisions of Order 14 Rule 5 of the Code of Civil Procedure. The last submission made by counsel is that a serious prejudice is likely

to be caused in case the additional issues proposed in the application (Annexure P-3) and detailed in Para 7 of the present petition are not framed and the petitioners are not permitted to adduce evidence to prove the additional issues.

Counsel for the contesting respondents has contested the claim with the submissions that the petitioners never challenged the order passed by the trial Court dismissing a similar application for framing of additional issues and the said order has attained finality. It is further submitted that the instant application is neither maintainable nor can otherwise be allowed as the same has been filed with a *mala fide* intent and ulterior motive to re-open the entire case under the guise of prayer for framing of additional issues.

I have heard counsel for the parties and perused the records.

The order passed by the trial Court dismissing an application of the petitioners for framing of additional issues has not been produced on record. There is nothing on record suggestive of the fact that the said order was challenged in an appropriate proceedings. The Court in appeal is competent to examine correctness and legality of each and every order passed by the trial Court while hearing the appeal except an order examined by this Court in exercise of its revisional jurisdiction. However, the

petitioners (appellants) are not entitled to file a fresh application for the same relief that has been dis-allowed by the trial Court. Under these circumstances, the instant application filed by the petitioners before the Appellate Court was not maintainable.

Perusal of the application would reveal that the first issue sought to be framed reads as follows:-

"Whether Bir Singh son of Narain Singh and Bir Singh son of Dalel Singh is one and the same person?"

The learned trial Court in the judgment dated 08.02.2010 has referred to the pleadings of the plaint in Paras 2 and 3. In Para 2, there is no reference to any such plea raised by the petitioners that Bir Singh son of Narain Singh was adopted by Dalel Singh. The petitioners have not placed on record a copy of the plaint filed by them. It appears that in the replication there is reference to the fact that Bir Singh was adopted by Dalel Singh. However, it remains a fact that the petitioners are claiming inheritance to the estate of Bir Singh son of Narain Singh. On the contrary, the contesting respondents are also claiming inheritance to Bir Singh son of Narain Singh on the plea that Bir Singh died issueless and had no wife. Under these circumstances, once there was no contest between the parties in regard to Bir Singh being son of Narain Singh, there was no occasion for the trial Court to frame Issue No.1 as has been sought to be framed merely because the

First Appellate Court while setting-aside the earlier judgment and decree passed by the trial Court vide order dated 09.01.2009 has made certain observations that there is dispute regarding identity of Bir Singh. However, the Court has already framed an issue whether Bir Singh son of Narain Singh died issueless and widowless and the onus has been laid upon the respondents/defendants.

Keeping in view the facts and circumstances of the present case, I am of the considered opinion that the application filed by the petitioners is nothing but misuse of process of law with an intent to open the entire controversy as they failed to get any relief when the suit was initially decided on 29.11.2002 and has now been decided vide judgment and decree dated 08.02.2010. It further appears to the Court that the petitioners are interested to keep the litigation alive one way or the other, pending in the Court for the past more than 15 years.

For the foregoing reasons, the petition is dismissed.

(REKHA MITTAL)
JUDGE

19.02.2016
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