

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

C.R. No.7339 of 2016

Date of Decision.04.11.2016

Gianender

.....Petitioner

Vs

Joginder and others

.....Respondents

Present: Mr. Aditya Jain, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner is aggrieved of the impugned order whereby the application filed under Order 14 Rule 5 CPC for framing of additional issues qua estoppel, limitation, locus standi and non-joinder of the parties etc., has been dismissed.

Mr. Aditya Jain, learned counsel appearing for the petitioner-defendant No.1 submits that the petitioner has acquired the interest in the land measuring 25 kanals 13 marlas sold by Sunita daughter of Geeta and various other persons like Babita, Bemlesh acquired the interest in view of the sale deed executed by Laxmi Narain son of Geeta in their favour whereas, the respondents-plaintiffs have set up a Will dated 18.8.1997 executed by Geeta. She died on 14.09.1997 and during all this period when the sale deeds were effected, the revenue record did not reflect about the inheritance of Geeta by way of testamentary evidence and therefore, issues sought to be raised would be essential and necessary for the adjudication of the civil suit. This aspect has not been taken care of and the application has been dismissed merely on the ground that it is a delaying tactic, as the application has been filed at the rebuttal stage.

paper book and of the view that the objections taken in the written statement take care of all possible objections sought to be incorporated by way of additional issues. For the sake of brevity, the preliminary objections taken in the written statement and as well as the issues framed thereon are extracted here-in-below:-

“Preliminary objections:-

- 1. That the suit of the plaintiffs is not maintainable in the present form.*
- 2. That the plaintiffs have no locus standi to file the present suit against defendant No.1.*
- 3. That the plaintiffs are estopped to file the present suit by act and conduct.*
- 4. That the suit is not within limitation.*
- 5. That the suit is not properly valued for the purpose of court fees and jurisdiction.*
- 6. That the suit is bad for non joinder and mis joinder of necessary parties.*
- 7. That the defendant No.1 is entitled to a special cost under Section 35A of CPC as the suit of plaintiffs is false and frivolous and for extracting the money illegally from defendant No.1.”*

Issues framed:-

- (1) Whether the impugned mutation No.5550 dated 13.7.1998 and impugned sale deed No.4746 dated 9.12.2013 executed by defendant No.3 in favour of defendant No.1 qua 1/8th share of the suit land are illegal, null and void and not binding upon the right of the plaintiffs?*
- (2) Whether plaintiffs are entitled to the relief of declaration as prayed in the plaint? OPP*

(3) Whether plaintiffs are entitled to the relief of declaration as prayed in the plaint? OPP

(4) Whether the suit of the plaintiffs is not maintainable? OPD

(5) Relief.”

No doubt the issue regarding maintainability of the suit is already there and onus is upon the petitioner-defendant No.1. The maintainability is of a very wide amplitude which embrace the locus standi, maintainability of the suit, estoppel etc. and as regards the limitation, Section 3 of the Limitation Act can always be pressed into service at any stage of the proceedings, much less, upto the highest Court. I am of the view that the framing of the additional issues would tantamount to *de novo* trial and under the garb of the same, the parties may try to fill up the lacuna in the evidence. Whatever evidence has been led, can be looked into and urged/agitated before the Court below at the final stage of the hearing of the suit. Any observation made by the trial Court in the impugned order would not come in the way or construed as an expression of opinion on the merits of the suit.

With the above observations, the impugned order is upheld and the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

November 04, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No