

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

-.-

CR 8638 of 2015
Date of decision: 02.06.2016

Hans Raj

..... *Petitioners*

Versus

Sunita Rani etc.

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Rajan Bansal, Advocate
 for the petitioner

Mr. Kashish Garg, Advocate
for respondents No. 1 to 3

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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 has been directed against the order dated 21.10.2015 (Annexure P5) passed by the Civil Judge (Junior Division) Bathinda whereby the learned trial Court has directed the petitioner/defendant No. 1 to lead evidence at the first instance while framing additional issue under Order 14 Rule 5 of the Code of Civil Procedure (in short, CPC).

Counsel for the petitioner would contend that as the respondents/plaintiffs namely Sunita Rani and others, daughters and maternal grand son of Bhagwan Dass have claimed their rights in the suit

property on the premise that the same is joint Hindu Family coparcenary property and the said fact has been denied by the petitioner/defendant in view of averments raised in the written statement, it is for the respondents/plaintiffs to open their case in order to establish the suit property to be joint Hindu coparcenary property. It is further argued that the learned trial Court without correctly appreciating the provisions of Order 18 Rule 1 CPC, has called upon the petitioner/defendant to adduce evidence at the first instance.

Affidavit of Sunita Rani daughter of late Bhagwan Dass, one of the plaintiffs filed in the Court is taken on record. As per affidavit, the deponent with consent of her another sister and Deepak Kumar (plaintiffs) is ready to give up the plea with regard to property being ancestral coparcenary property.

Counsel for the contesting respondents/plaintiffs has made a statement that the plaintiffs would make a statement either in person or through their counsel before trial Court giving up their claim that the suit property is ancestral coparcenary property and would further request for deletion of the pleadings qua the suit property to be coparcenary property.

As the respondents/plaintiffs have decided to give up their plea claiming the suit property to be ancestral coparcenary property or their entitlement to a share in the suit property on the basis of its being joint Hindu family/ancestral coparcenary property, the petitioner's grievance that he could not be called upon to adduce evidence at the first instance to prove the Will in question propounded by him, no longer survives. That being so, the petition is liable to be dismissed and ordered accordingly.

In view of what has been discussed hereinabove, the petition is

dismissed. However, the respondents/plaintiffs shall remain bound by the statement made by their counsel and would suffer a statement before the trial Court giving up their claim with regard to the suit property being joint Hindu family/ancestral coparcener property. In case, the respondents/plaintiffs fail to make such a statement before the trial Court, the order passed by the trial Court and impugned by the petitioner shall be deemed to be set aside and it would be the respondents/appellants who would lead evidence at the first instance.

(Rekha Mittal)
Judge

02.06.2016
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