

RSA. No. 964 Of 2012 (O&M)

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

RSA. No. 964 of 2012 (O&M)

Date of Decision: 22.04.2016

Gurmaninder Singh

.....Appellant

VS.

Jagir Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Ranghi, Advocate and
Mr. Harmanpreet Singh Cheema, Advocate
for the appellant.

Mr. Daldeep Singh, Advocate
for respondent No.1.

AUGUSTINE GEORGE MASIH,J. (Oral):

It is the contention of the learned counsel for the appellant that the case requires to be remanded back in the light of the fact that after re-framing of issue No.3 where the onus to prove was shifted upon the appellant-defendants but no opportunity was given to the appellant-defendants to lead their evidence. In support of this contention, he has placed reliance upon the judgment of this Court in ***Ranbir Singh and***

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others Vs. Tara Chand and others, 2009 (4) R.C.R. (Civil) 92.

2. Counsel for the respondents could not dispute the fact as stated by the counsel for the appellant. He, however, submits that the appellant-defendants have not produced original Will on which reliance has been placed by them nor any witness in support of the Will has been produced and he, thus, contends that the remand of the case will be a futile exercise. He further states that the arguments were heard on 23.07.2010 after re-casting of issue No.3 on 22.07.2010 but no objection or plea was raised for leading evidence in support of the re-cast issue where the onus to prove was shifted upon the appellant-defendants. He contends that after the arguments when the case was fixed for pronouncement, it is within that interregnum period, an application was moved for leading evidence in support of shifted onus to prove issue No.3 which has been considered and dismissed by the trial Court while passing the order on 29.07.2010. He, thus, contends that the prayer made by the counsel for the appellant cannot be accepted.

3. I have considered the submissions made by the counsel for the parties and have gone through the impugned judgment as also the zimni orders passed by the trial Court.

4. A perusal of the order dated 22.07.2010 would show that although the issue was re-cast with the consent of the parties but there was no statement given by the counsel for the appellant-defendants that they do not want to lead any evidence in support of the recast issue, whereby the onus to prove was shifted on the appellant-defendants. In the light of this fact, the application for leading evidence as has been filed by the appellant-defendants should have been duly considered and an opportunity given to lead the evidence as has been held by this Court in its judgment in *Ranbir Singh's* case (supra).

5. The contention of the learned counsel for the respondents that the appellant-defendants did not opt for leading evidence, cannot be accepted in the light of the fact that they had moved an application for leading evidence in support of the shifted onus to prove upon them which has been rejected and this ground also cannot be accepted.

6. In view of the above, the present appeal is allowed. The impugned judgments and decree passed by the Courts below are hereby set aside and the case is remanded back to the trial Court to grant opportunity to the appellant-defendants to lead evidence in support of the shifted onus to prove as per the re-cast issue no.3 dated 22.07.2010.

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The appellants will be granted two effective opportunities to conclude their evidence. Similarly, the respondent-plaintiffs will also be granted two effective opportunities, if they opt for leading their evidence. On conclusion thereof, the Court shall proceed and decide the suit afresh in accordance with law.

7. Parties to appear before the trial Court on 04.05.2016.

8. Copy of this order be sent forthwith to the trial Court.

CM No.2528-C of 2012

In view of the order passed in the main appeal, the present application has been rendered infructuous and the same is disposed of as such.

April 22, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**