

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

**SAO No.97 of 2015 (O&M)
Decided on: 16.11.2016**

Sewa Singh and others

....Appellants

Versus

Jodh Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Aman Bahri, Advocate
for the appellants.

Mr. Vijay Lath, Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment dated 23.07.2015 passed by the Additional District Judge, Rupnabar whereby the appeal filed by the respondent/plaintiff against the judgment and decree dated 13.03.2012 passed by the Additional Civil Judge (Sr. Division) Rupnagar is allowed, judgment and decree is set-aside and the matter has been remitted to the trial Court to record findings on additional issue i.e. 8-A. *Whether the suit property situated in village Niholka is ancestral property? If so, its effect? OPD*, after giving opportunity to each of the parties to lead fresh evidence, if so required and then to decide the case afresh.

Counsel for the appellants has submitted that Jodh Singh son of Pritam Singh – respondent/plaintiff filed a suit for declaration that he along with proforma defendant, Raghbir Singh son of Pritam Singh is the owner in possession in equal share of land detailed in

headnote of the plaint as per *Jamabandi* for the year 2001-02 situated in village Jindapur, Tehsil and District Ropar on the basis of registered Will dated 28.12.1981 purported to be executed by Pritam Singh son of Kishan Singh and entry regarding ownership of defendants No.1 to 9 is illegal, null and void and liable to be corrected with consequential relief of permanent injunction.

The learned trial Court in the light of pleadings of the parties, evidence adduced and rival submissions made by their respective counsel accepted plea of the respondent/plaintiff with regard to execution of Will in his favour by Sh. Pritam Singh but negatived his claim *qua* ownership and possession of the suit land on the premise that the Will in question does not pertain to land situated in village Jindapur. It is further submitted that as land of village Niholka is not the subject matter of suit, Court of appeal has committed a serious error rather illegality by framing an additional issue and on that ground setting-aside the judgment and decree and remitting the matter to the trial Court for adjudication afresh after permitting the parties to adduce evidence *qua* additional issue.

Counsel for the contesting respondents, on the contrary, has supported the impugned judgment with the submission that as the respondents in the written statement have raised a specific plea with regard to the property situated in village Niholka to be ancestral property and the Will set up by the appellant/plaintiff makes reference to the property situated in village Niholka, the Court of appeal has rightly framed an additional issue and remitted the matter for adjudication afresh.

I have heard counsel for the parties, perused the paperbook and the various annexures appended with the appeal.

A plain and careful reading of the plaint (Annexure A1) would make it evident that the appellant/plaintiff filed a suit for declaration claiming ownership in possession of land situated in village Jindapur on the basis of registered Will dated 28.12.1981 alleged to be executed by Sh. Pritam Singh, erstwhile owner of the land. The appellant/plaintiff did not raise any issue with regard to his entitlement to land situated in village Niholka. Conversely, in para 4 of the plaint, it has been specifically pleaded that mutation regarding land of said Pritam Singh situated in village Bela and Niholka was sanctioned in favour of the plaintiff and proforma defendant on the basis of registered Will dated 28.12.1981 bearing mutation No.897 pertaining to village Bela and No.1242 regarding village Niholka. Indisputably, the respondents/defendants did not file any counter-claim with regard to their entitlement to inherit to the estate of deceased – Pritam Singh situated in village Bela or Niholka. As the land situated in village Niholka is not the subject-matter of litigation initiated at the instance of the appellant/plaintiff, there was no occasion for the Court of appeal to frame an additional issue pertaining to the property situated in village Niholka. The Court of appeal has failed to appreciate the real controversy between the parties and misdirected itself by framing an additional issue, setting-aside the judgment and decree passed by the trial Court and remitting the matter to the trial Court for adjudication afresh including the additional issue. In this view of the matter, framing of additional issue by the trial Court and setting-aside the

judgment and decree on that ground cannot be allowed to sustain and liable to be set-aside and ordered accordingly.

For the foregoing reasons, the appeal is allowed, the judgment passed by the Court of appeal is set-aside, the additional issue framed by the Court of appeal is struck-down being not relevant and material for decision of the *lis* and the matter is remitted to the Court of appeal for decision of the appeal afresh, in accordance with law. The parties through their counsel are directed to appear before the Appellate Court on 01.12.2016.

16.11.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No