

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

CR No. 223 of 2017(O&M)

Date of decision: 21.11.2017

Pawan Kumar

.....Petitioner

VERSUS

Guriqbal Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sunny K. Singla, Advocate for the petitioner.

Mr. Deepak Aggarwal, Advocate for respondent No.1

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 02.12.2016 (Annexure P-4) passed by the Civil Judge (Senior Division), Nabha whereby the application filed by the petitioner/defendant to frame an additional issue under Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') has been dismissed.

Counsel for the petitioner has submitted that the respondent/plaintiff Guriqbal Singh has filed a suit for declaration that decree passed in Civil Suit No.43 of 25.04.2011 titled **Pawan Kumar Vs. Nachhatar Kaur** on 07.09.2012 by the Court of Additional Civil Judge (Senior Division), Nabha in favour of defendant No.1 is null, void, non est and has been obtained by playing fraud upon the Court, on the premise that Nachhatar Kaur, defendant in the suit, was not alive at the time of filing of the suit as she died more than 15 years back and the said fact was concealed from the Court by Pawan Kumar. It is further submitted that the petitioner/defendant in the written statement has denied these allegations

with regard to death of Nachhatar Kaur more than 15 years back or she being not alive at the time of filing of the suit titled **Pawan Kumar Vs. Nachhatar Kaur.** It is further submitted that though the trial Court has framed an issue No.1 'Whether plaintiff is entitled to declaration and permanent injunction, as prayed for? OPP' but no specific issue has been framed as to whether Nachhatar Kaur was alive or dead on the date of institution of the suit titled **Pawan Kumar Vs. Nachhatar Kaur** nor any issue has been framed with regard to the decree dated 07.09.2012 passed in the aforesaid suit being null, void, non est and has been obtained by playing fraud upon the Court. According to counsel, a question of fact or law asserted by a party and denied by the other gives rise to an issue, required to be framed by the Court under Order 14 of the CPC. It is argued with vehemence that as the entire controversy in the present case revolves around the issue of existence or non-existence of Nachhatar Kaur on the date of institution of civil suit titled **Pawan Kumar Vs. Nachhatar Kaur,** a specific issue is required to be framed in this regard.

Counsel representing the contesting respondent, on the contrary, has supported the impugned order with the submission that the trial Court has rightly held that the issue sought to be framed by the petitioner would be covered in the issue qua entitlement of the respondent/plaintiff to declaration and injunction, subject matter of issue No.1 framed on 06.11.2015. Another submission made by counsel is that the respondent/plaintiff has already concluded his evidence on the basis of issues framed by the trial Court and he may be allowed an opportunity to lead further evidence in case an additional issue is framed.

I have heard counsel for the parties, perused the paper-book and the various annexures appended with the petition.

Perusal of pleadings of the parties and so also the relief claimed by the respondent/plaintiff makes it evident that the plaintiff has sought declaration that the decree passed in the aforesaid civil suit decided on 07.09.2012 is null, void, non est and has been obtained by playing fraud upon the Court, therefore, the plaintiff is entitled to declaration that he and performa defendant are the owners in possession of 1/5th share in land, detailed in head-note of the plaint. There is a serious controversy between the parties, if Nachhatar Kaur arrayed as defendant in Civil Suit No.43 of 25.04.2011 that culminated in the judgment and decree dated 07.09.2012, was alive or otherwise on the date of institution of the suit. Under the circumstances, a specific issue was required to be framed by the trial Court on the question of decree passed in the aforesaid civil suit. Accordingly, the present petition is disposed of and additional issue No.1 is framed to the following effect:-

“Whether the decree dated 07.09.2012 passed in Civil Suit No.43 of 25.04.2011 titled Pawan Kumar Vs. Nachhatar Kaur by the Court of Additional Civil Judge (Senior Division) Nabha in favour of defendant No.1 is null, void, non est and has been obtained by playing fraud upon the Court? OPP”

Issue No.1 framed by the trial Court shall be re-numbered as 1-A.

As the respondent/plaintiff has already concluded his evidence on the basis of issues framed by the trial Court, he would be at liberty to file an appropriate application before the trial Court for providing him an opportunity to lead further evidence and the same shall be decided by the Court below on the basis of evidence already adduced coupled with merits of the application, in accordance with law. However, nothing stated

hereinbefore shall be construed as an expression of opinion on merits of the case.

NOVEMBER 21, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no