

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 3533 of 2014

Date of decision:- 19.09.2017.

Narinder Singh

...Petitioner

versus

Manjit Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. G.S. Sirpikhi, Advocate
for the petitioner.

Mr. A.S. Manaise, Advocate
for the respondents.

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 05.05.2014 (Annexure P-5) passed by the learned Civil Judge (Jr. Divn.) Batala vide which the application filed by the petitioner under Order 14 Rule 5 CPC read with Section 151 CPC has been dismissed.

Brief facts of the case are that in the year 2007, petitioner along with performa respondents Nos. 2 and 3 filed a suit against respondent No. 1 for possession of land measuring 3 marlas bearing Khasra No. 303. Khewat No. 36, Khatauni No. 72, as mentioned in the copy of jamabandi for the year 2004-05 and as situated at village Hargobindpur, Had Bast No. 111, Tehsil Batala, District Gurdaspur after removal of the Malba and the structure raised by respondent No. 1 on it illegally. The plaintiff-petitioner pleaded that plaintiffs are co-sharers/co-owners in the land in dispute and respondent No. 1 has got no right, title and interest with the land in dispute. He has illegally occupied the suit land and has amalgamated the suit land with his property situated on the eastern side of the suit land since about 4/5

years back.

Respondent No. 1-defendant filed his written statement alleging that he and other persons have become the owners by adverse possession being their possession a long, hostile, avert, open and uninterrupted and to the knowledge of the petitioner for the last more than 70 years (Annexure P-2).

The learned Court below on 28.10.2010 framed the following issues:-

- “1. Whether the plaintiffs are entitled to possession of the suit property as prayed for? OPP*
- 2. Whether the plaintiffs have got no cause of action to file the present suit? OPD*
- 3. Relief.”*

Thereafter, plaintiffs and defendant closed their evidence and on 21.04.2014, the petitioner-plaintiff filed an application (Annexure P-3) under Order 14 Rule 5 CPC read with Section 151 CPC stating that the defendant have taken the plea in the written statement that the defendants have become owners in possession by way of adverse possession but no issue in this respect has been framed and prayed that the following issue may kindly be framed”-

“Whether the defendants have become the owners in possession over the suit land by way of adverse possession? OPD.”

Respondent No. 1-defendant filed his reply to the application (Annexure P-4). The application has been dismissed, vide impugned order dated 05.05.2014 (Annexure P-5) by holding that the plea of adverse possession has been taken by the defendant in written statement but no

counter claim has been filed by the defendant. Hence, the present revision petition.

Learned counsel for the petitioner has relied upon a judgment of this Court in a case of ***Sher Singh v. General Public, 2001(3) RCR (Civil) Page 780*** wherein a suit for declaration with consequential relief for permanent injunction and in the alternative consequential relief for joint possession was filed. The defendants appeared and filed written statement alleging that they have become owners by adverse possession. The plaintiff filed an application under Order 14 Rule 5 CPC stating that when the defendants have taken a specific plea with regard to adverse possession, it was obligatory on the part of the Court to frame a specific issue in this regard. The trial Court dismissed the application and in the revision petition filed by the plaintiff, this Court held that there is defence that the defendants are in possession and they have become owners and in these circumstances, it was obligatory on the part of the Court to frame a specific issue with regard to adverse possession. The revision petition was allowed.

Heard learned counsel for the parties and have gone through the records of the case with the assistance of learned counsel for the parties.

Reference at this stage can be made to a judgment of this Court in a case of ***Gursharan Singh vs. Saravjot Singh and others, 2016(5) RCR (Civil) 290*** wherein the application of the plaintiff under Order 14 Rule 5 CPC read with Section 151 CPC for framing additional issue has been rejected. This Court allowed the revision petition by holding that the proposed issues as sought by the defendants do not run counter to any of the original issues rather these issues are in consonance with issue No. 1 with further elaboration, requiring the parties to lead specific evidence as to

facilitate the Court to dispose of the controversy in an effective manner.

Applying the ratio of the above two judgments to the facts of the present case, the revision petition is allowed. Order dated 05.05.2014 (Annexure P-5) passed by the learned Civil Judge (Jr. Divn.) Batala is set aside. This Court frame the following additional issue which will be treated as additional issue No. 2-A in the trial Court and directions are being given to the trial Court to give an opportunity to the parties to lead evidence on this additional issue and then proceed according to law. The additional issue No. 2-A reads as under:-

“Whether the defendants have become the owners in possession over the suit land by way of adverse possession? OPD.”

C.R allowed.

19.09.2017

G Arora

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No