

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

CR No.407 of 2014
Date of decision: 9th Aug. 2017

Narinder Singh @ Swaran Singh

...Petitioner

Versus

Mohinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harminder Singh, Advocate for the petitioner.

Mr. M.S. Kang, Advocate for the respondents.

ANIL KSHETARPAL, J.

The plaintiff-petitioner has filed this revision petition under Article 227 of the Constitution of India against the order dated 06.11.2013 by which an application moved by the plaintiff for determining the paternity of defendant-Mohinder Singh through DNA test, has been dismissed by the trial Court.

The plaintiff had filed a suit for declaration with respect to the property mentioned in the plaint. He claimed that he is known by two names namely Narinder Singh and Swaran Singh. He had further claimed that he is adopted son of Lt. Sh. Gurbax Singh and defendant No.1-Tej Kaur. He had also sought declaration that his death certificate dated 29.09.2006 be declared null, void, result of fraud and fabrication of

document.

During the pendency of the suit, the defendant No.2 had claimed that he is natural son of defendant No.1.

The plaintiff disputed this fact and moved an application for determining the paternity of defendant-Mohinder Singh through DNA test.

The learned trial Court after hearing learned counsel for the parties dismissed the application by recording as under:-

“4. I have heard the learned counsel for both the parties and have gone through the case file. Ld. Counsel for the applicants contended that he alongwith defendant No.2 is adopted son of defendant No.1 of Tej Kaur and Gurbax Singh, but on the other hand, defendant No.2 claiming himself the natural son of Tej Kaur and Gurbax Singh. Basically dispute among the parties is regarding the property which is mutated on the name of the Tej Kaur w/o Gurbax Singh on the death of Narinder Singh on dated 27.9.2006. After production of death certificate, which is also sought to be declared as false and fabricated one. In this suit, there is no dispute regarding the paternity of the defendant No.1, rather it is regarding the property which is already on the name of plaintiff which is now wrongly mutated on the name of defendant No.1 after producing a false certificate of death of plaintiff by defendant No.2. It is the duty of the plaintiff to prove his own case by leading evidence in his favour, court cannot be the agency for collection of the evidence for any party. Moreover, the relief sought by the applicant involve the third person to drag into the proceedings, for

giving the relief, why should be they compelled to be in trouble. Case of the plaintiff can be proved otherwise leading the evidence to prove his contention in the plaint. So, the present application of the plaintiff is dismissed.”

This order has been challenged in the present revision petition.

I have heard learned counsel for the parties and with their able assistance gone through the record of the case.

It is not in dispute that the main dispute in the suit is with respect to the property. It is also not in dispute that the plaintiff is claiming that he is adopted son of Gurbax Singh and Tej Kaur.

The plaintiff claims that in fact Mohinder Singh is not natural son of Tej Kaur widow of Gurbax Singh. He claims that he was also adopted by Smt. Tej Kaur alongwith the plaintiff. It has been asserted by the plaintiff that in fact defendant No.2-Mohinder Singh is natural son of Kishan Singh son of Harnam Singh.

The main dispute in the present case is with respect to the property. Other issue which requires determination is whether plaintiff-Narinder is also known as Swaran Singh and whether death certificate dated 29.09.2006 regarding his death is result of fraud and fabrication and plaintiff is alive.

It is the duty of the plaintiff to prove his case by leading evidence in his favour. The paternity of Mohinder Singh is not the main dispute in the present case. The Court has already framed the issues and put onus on the plaintiff that whether defendant No.2 is adopted son of

Gurbax Singh or not. The issues as framed by the Court are extracted as under:-

- “1. Whether plaintiff is entitled to the relief of declaration as prayed for? OPP*
- 2. Whether the plaintiff is liable to get the suit land partitioned? OPP*
- 3. Whether defendant No.2 is adopted son of Gurbax Singh? OPP*
- 4. Whether the plaintiff is entitled to the relief of permanent injunction? OPP*
- 5. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 6. Whether the res-judicata is not applicable to the present suit? OPD*
- 7. Whether the plaintiff has not come to the court with clean hands? OPD*
- 8. Relief.”*

Thereafter, the Court framed the additional issues on 11.04.2016, which are extracted as under:-

“IA: Whether death certificate projecting date of death of Narinder Singh s/o Gurbax Singh, as 27.9.2006 is forged and fabricated, if so, its effect? OPP.

IB: Whether the plaintiff Narinder Singh @ Swaran Singh is one and the same person and adopted son of Tej Kaur-daughter No.1? OPP

IVA: Whether Narinder Singh who is stated to be natural born son (twin brother of defendant No.2) of Gurbax Singh and Tej Kaur-defendant No.1 was in existence ever? OPD”

A look at the issues would also prove that the Court has

rightly placed onus on the plaintiff. It is for the plaintiff to prove this fact by leading evidence. The Court would not come to the help of plaintiff to collect the evidence on his behalf. It is the case of the plaintiff himself in the plaint that defendant No.2 is adopted son of defendant No.1 namely Smt. Tej Kaur.

Therefore, finding no ground to interfere in the findings rendered by the trial Court. Accordingly, present revision petition is dismissed.

9th Aug. 2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No