

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

Date of decision: 6.9.2017

1.

CR No.5198 of 2017(O&M)

Rajwati

.....Petitioner

VERSUS

Prem Puti and others

.....Respondents

2.

CR No.5714 of 2017(O&M)

Malkhan Singh (since deceased) through his LRs

.....Petitioner

VERSUS

Smt. Kamlesh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rakesh Dhiman, Advocate for the petitioner
(in CR No.5198 of 2017).

Mr. Rajnikant Upadhyay, Advocate for the petitioner
(in CR No.5714 of 2017).

REKHA MITTAL, J. (Oral)

This order will dispose of CR Nos.5198 and 5714 of 2017 as these have emerged out of the same order dated 10.07.2017 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Gurugram whereby application for consolidation of two suits Malkhan Singh (since deceased) represented by his LRs Vs. Smt. Kamlesh and others (Annexure P-1) and Smt. Kamlesh Devi and others Vs. Mukesh and others (Annexure P-2) has been dismissed.

For facility of reference, facts are taken from CR No.5198 of 2017.

Counsel for the petitioner has submitted that both the suits pertain to the same property in which counter claims have been filed by respective defendants. In both the cases, question of Will and sale deed bearing Vasika No.3394 dated 01.06.2009 is involved, therefore, in order to avoid passing of conflicting judgments, it is expedient in the interest of justice that both the suits are consolidated and decided by a single judgment. It is further argued that earlier the suits were pending in different Courts and an application filed before learned District Judge, Gurugram was allowed and both the suit are now pending in the same Court.

Counsel representing the petitioner in CR No.5714 of 2017 has echoed the arguments advanced by Sh. Rakesh Dhiman, Advocate, representing the petitioner in the other petition.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

The trial Court, on a detailed consideration of submissions made by counsel for the parties has negated plea of the petitioners with the following observations:-

“....The suit titled, “Malkhan Vs. Smt. Kamlesh and others” is more exhaustive and has reached the final stage and that suit must proceed irrespective of the fact that same may be decided first and that the other suit is still at the stage of framing of issues. No ground is made out for consolidation of the suits only on the premise that the subject matter is same in both the suits and that the validity of the same (sic) is under challenge. In fact in the suit titled, “Smt. Kamlesh Devi and others Vs. Mukesh and others” the Will is not primarily in question and only the sale deed has been challenged. For the aforesaid reasons, the application

for consolidation of the suits is considered meritless and the same is, hereby, dismissed.”

Counsel for the petitioner has not disputed that in the subsequent suit, parties have already adduced their evidence, defendants have closed their evidence on 24.01.2017 and the case is fixed for rebuttal evidence. However, counsel for the petitioner has apprised the Court that an application for framing of an additional issue is pending consideration before the Court below.

Taking into consideration that the suit titled Malkhan Singh (since deceased) represented by his LRs Vs. Smt. Kamlesh and others in which validity of Will as well as sale deed is involved and the same has already reached the stage of evidence in rebuttal by the plaintiff(s), no error much less infirmity can be noticed in the impugned order warranting intervention.

For the foregoing reasons, findings no merit, the petitions fail and are accordingly dismissed.

However, in case the application filed for framing of an additional issue is allowed by the trial Court, the petitioners may file an appropriate application in the changed scenario and the same shall be decided by the Court below in accordance with law.

SEPTEMBER 6, 2017
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no