

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CR-5272-2017

Date of Decision:10.08.2017

Sheetal Parshad (since deceased)
through his LR

.....Petitioner

Versus

Rameshwar Parshad Jain and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Vijay Sharma, Advocate,
for the petitioner.

RAMESHWAR SINGH MALIK, J.(Oral)

Defendant No.1 has approached this Court, by way of present revision petition, filed under Article 227 of the Constitution of India, against the order dated 27.07.2017 passed by the learned trial court, whereby application of the petitioner under Order 14 Rules 1, 2 and 5 of the Code of Civil Procedure, was dismissed, declining his prayer for framing additional issues.

Heard learned counsel for the petitioner.

It is a suit for separate possession by way of partition by metes and bounds. A decree of permanent injunction was also sought by the plaintiff restraining the defendants from transferring by way of sale, gift, mortgage, exchange or otherwise any portion of the disputed property which was a residential property. After completion of pleadings of the parties, learned trial court framed the appropriate issues vide order dated

16.04.2012.

The issues already framed by the learned trial court vide order dated 16.04.2012, read as under:-

- “1. Whether the plaintiff is entitled for a decree of separate possession by way of partition by metes and bounds of the suit property?OPP*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction?OPP*
- 3. Whether Ram Parshad Jain was owner of $\frac{3}{4}$ share and Har Parshan Jain was owner of $\frac{1}{4}$ share out of the suit house?OPD*
- 4. Whether Ram Parshad Jain executed a Will dated 25.02.1981 in favour of the defendant No.1 of $\frac{3}{4}$ share in the suit house?OPD*
- 5. Whether the defendant No.1 validly sold house in dispute vide two registered sale deeds dated 31.08.2001 in favour of the defendants No.8 and 9?OPD*
- 6. Whether the plaintiff has no cause of action to file the present suit?OPP*
- 7. Whether the suit is not within limitation?OPD*
- 8. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD*
- 9. Relief.”*

Accepting the abovesaid issues to be correctly framed, both the parties produced their respective documentary as well as oral evidence. When the case was at the final stage, defendant No.1-petitioner filed the application seeking framing of two additional issues. The proposed additional issues are as under:-

- “i. Whether on the basis of the Will dated 25.2.1981 executed by the deceased Ram Parshad Jain in favour of Sheetal Parshad son of Harparshad defendant No.1, probate was ordered to be issued by the court of Sh.B.S.Teji, the then Addl. District Judge, Patiala vide*

order dated 16.12.1992. If so its effect?OPD

ii. Whether the plaintiff has a preferential rights under Section 22 of the Hindu Succession Act to buy the share of other co-owners and same could not be conveyed to a stranger to the family. If so its effect?OPP”

After hearing the learned counsel for the parties, the learned trial court arrived at a judicious conclusion that the abovesaid two additional issues proposed by the defendant No.1-petitioner were not necessary to be framed as the same would be covered by already framed issue No.1 and accordingly, passed the impugned order dated 27.07.2017. The bare perusal of impugned order passed by the learned trial court would show that the impugned order has been rightly passed by the learned trial court, which is strictly in accordance with true facts of the case and the same deserves to be upheld.

The relevant observations made by the learned trial court in para 5 of the impugned order, which deserve to be noticed here, read as under:-

“On perusal of the written statement filed by defendant No.1, the defendant has relied upon one Will dated 25.2.1981 allegedly executed in favour of defendant No.1 by Ram Parshad Jain. That probate was ordered to be issued with regard to 3/4th share of Ram Parshad Jain in favour of defendant No.1. As per this court order dated 16.4.12 issues have already been framed. Issues No.1 and 4 have already been framed vide said order in which the onus has been cast upon the plaintiff for issue No.1 wherein the plaintiff has to prove his entitlement for decree for separate possession by way of partition. The onus of issue No.4 has been cast upon the defendant as per which she has to prove the execution of the Will dated 25.2.1981 in favour of defendant No.1 of 3/4th share. The pleadings regarding

probates has been already made by defendant No.1 in his written statement and is thus auxiliary to the onus cast upon him for proving the issue No.4. Since probate is connected with the Will dated 31.5.1981. The applicant is merely trying to fill up the lacuna in the case due to non production of any evidence in this regard which cannot be allowed at this stage. As far as the factum of framing of issues is concerned, this court is of the opinion that appropriate issues have already been framed and the pleadings of the defendant/applicant are already covered in those issues as such no separate issue is required to be framed. Moreover, the pleadings of the parties are well within their knowledge. It cannot be pleaded at this stage that they did not have notice regarding the matter in issues between the parties, therefore in the garb of the present application, the defendant cannot be allowed to lead further evidence. As regards proposed issue No.2, this court is of the opinion that same is also covered under issue No.1 wherein the onus has been cast upon the plaintiff to prove as to whether he had any preferential rights over the property to sell his share by defendant No.1 in favour of 3rd party or not. Therefore, the present application appears to be merely baseless and same is hereby dismissed.”

When the learned counsel for the petitioner was confronted with the abovesaid judicious conclusion arrived at by the learned trial court based on correct appreciation of true fact situation obtaining in the case, he could not point out any patent illegality in the impugned order. Further, defendant No.1-petitioner had sufficient time and opportunity for seeking framing of additional issues, if any, at the appropriate time and stage of the suit but he failed to do so and that too for no good reasons.

Petitioner could not furnish any plausible explanation as to why he allowed the suit to reach at its final stage before filing the application for

framing of additional issues. In fact, no additional issue was required to be framed in the present case as rightly observed by the learned trial court in the impugned order and the same deserves to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments passed by this Court in cases **Jaswant Singh Versus Sukhwinder Singh and another**, 2006(4) Law Herald 2856, **Dera Baba Budh Ram and others Versus Mahabir Singh**, 2014(30) RCR (Civil) 127, **Surinder Singh Versus Kuldeep Singh and others**, 2015(8) RCR(Civil) 107 and **Vinay Kumar Mahajan Versus Harjeet Singh and others**, 2016(2) L.A.R. 564.

So far as the judgment relied upon by the learned counsel for the petitioner in **M/s Divya Exports Versus M/s Shalimar Video Company and others**, 2014(16) SCC 194, is concerned, there is no dispute about the observations made and law laid down therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the petitioner, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533, **Union of India Vs. Amrit Lal Manchanda and others**, 2004 (3) SCC 75, **State of Orissa Vs. Md. Illiyas**, 2006 (1) SCC 275 and **State of Rajasthan VS. Ganeshi Lal**, 2008 (2) SCC 533.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by the learned trial Court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, instant revision petition stands dismissed, however, with no order as to costs.

August 10, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No