

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

276

CR-598-2017

Date of Decision:02.05.2017

Sohrab

.....Petitioner

Versus

Osaf and others

.....Respondents

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

Present: Mr.Ashish Gupta, Advocate,
for the petitioner.

Mr.Kanwar Satbir Singh, Advocate,
for the respondents.

RAMESHWAR SINGH MALIK, J.(Oral)

Present revision petition, at the hands of the plaintiff, filed under Article 227 of the Constitution of India, is directed against the impugned order dated 03.01.2017 (Annexure P-4) passed by the learned trial Court, whereby application moved by the petitioner for framing an additional issue qua the validity of Will in question, was dismissed by the learned trial Court.

Notice of motion was issued and in the meantime, learned trial Court was directed to adjourn the case beyond the date fixed by this Court.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the plaintiff-petitioner, while filing his suit for declaration has already specifically challenged the validity of Will dated 20.10.2010 suffered by his father in favour of the defendants, who are none else but his brothers and sisters-in-

laws (wives of the brothers). Once the validity of Will in question was

under challenge right from day one, learned trial Court ought to have framed appropriate issue regarding the Will in question. However, no such issue was framed at the time of framing the issues vide order dated 17.11.2016. Having been left with no other option, plaintiff had moved the application under Order 14 Rule 5 of the Code of Civil Procedure (for short “the CPC”) with a prayer to the learned trial Court for framing appropriate additional issue qua the validity of Will in question. It was this application of the plaintiff-petitioner which has been dismissed by the learned trial Court by passing the impugned order.

A bare perusal of the impugned order would show that the learned trial Court failed to appreciate the above-said factual and legal aspect of the matter. When the validity of the Will in question was under challenge, it was incumbent upon the learned trial Court to frame appropriate issue regarding validity of the Will. However, if there was a bonafide omission on the part of the learned trial Court, while framing the issues vide above-said order dated 17.11.2016, the application moved by the petitioner-plaintiff under Order 14 Rule 5 CPC ought to have been allowed by the learned trial Court. Further, there was hardly any scope to raise any objection, at the hands of the defendants-respondents for framing of additional issue. Having said that, this Court feels no hesitation to conclude that the learned trial Court exceeded its jurisdiction, while passing the impugned order and the same cannot be sustained.

It is the settled principle of law that rules of procedure are meant for advancing the cause of justice. In the peculiar facts and circumstances of the case in hand, learned trial Court ought to have framed additional issue qua the validity of Will in question granting equal

opportunity to both the parties to put their best case before the Court, by leading their documentary as well as oral evidence. It would have also facilitated the learned trial Court to arrive at a judicious conclusion with a view to do complete and substantial justice between the parties by rendering an effective judgment. However, since the learned trial Court failed to appreciate this material aspect of the matter, while passing the impugned order, it cannot be sustained, for this reason also.

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 since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, impugned order dated 03.01.2017 passed by the learned trial Court is hereby set aside. Application moved by the petitioner-plaintiff under Order 14 Rule 5 CPC for framing additional issue would stand allowed.

Consequently, learned trial Court is directed to frame additional issue qua the validity of Will in question, by passing an appropriate order, in accordance with law. Thereafter, learned trial Court shall proceed further deciding the suit at an early date.

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

May 02, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No