

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 14.02.2018

1. CR No.1320 of 2017 (O&M)

Satbir

..... Petitioner

Versus

Karam Singh and others

..... Respondents

2. CR No.2547 of 2017 (O&M)

Karam Singh and others

..... Petitioners

Versus

Satbir and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kunal Mulwani, Advocate
for the petitioner (in CR-1320-2017) and
for respondent No.1 (in CR-2547-2017).

Mr. Sanjiv Kumar Aggarwal, Advocate
for respondents No.1 to 5 (in CR-1320-2017) and
for the petitioners (in CR-2547-2017).

Mr. Ajay Kumar Gupta, Advocate
for respondent No.8 (in CR-1320-2017) and
for respondent No.4 (in CR-2547-2017).

ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, I shall be disposing of two revision petitions bearing CR No.1320 of 2017 titled as 'Satbir Vs. Karam Singh and others' and CR No.2547 of 2017 titled as 'Karam Singh and others Vs. Satbir and others' which are connected.

Plaintiff and the defendant both are in the revision petition dissatisfied with the order passed by the learned trial Court dated 01.02.2017. When the case was at the final stage, the plaintiff moved an application under Order 6 Rule 17, CPC seeking permission to amend the plaint so as to add paragraphs 3(A) and 11(A). Paragraph 3(A) is with regard to a factual assertion that Sunti who died on 02.10.1920, had left behind one daughter Jahro and two minor sons namely Nihala and Ramnath. The plaintiff pleads that inadvertently in the plaint, the plaintiff had mentioned that Sunti had left behind only one son and one daughter. The plaintiff came to know about the second son recently.

The second amendment is with regard to the legal objection that Hindu Widow Re-Marriage Act, 1856 was applicable.

Learned trial Court after noticing that the suit is at the final stage, has allowed the plaintiff to place on file the revenue record pertaining to said amendment by invoking Section 165 of the Evidence Act, 1872. With regard to second amendment in paragraph 11, the Court has noticed that such amendment is not required to be incorporated in the plaint as it is only a legal question which can be decided by the Court.

The grievance of the plaintiff is that the prayer for the amendment has been declined whereas the grievance of the defendant is that the Court has wrongly allowed the plaintiff to produce on record the revenue record without there being any application for additional evidence.

This Court has heard the arguments of learned counsel for the parties at length and with their able assistance gone through the documents filed before this Court.

It is not in dispute that the plaintiff has filed a suit praying for

issuance of a decree for declaration declaring the plaintiff and proforma defendants to be owners while seeking setting aside of gift deed dated 12.08.1987. Mutation sanction on the basis whereof and Civil Court decree passed in Civil Suit No.194 of 1983. The parties to this litigation are alive to the controversy involved in the present case. The learned trial Court has rightly declined the prayer for amendment but has allowed the plaintiff to place on revenue record which is per se admissible.

On the other hand, learned counsel for the defendant has objected to taking the revenue record on the file on the ground that there is no application for additional evidence. In the considered opinion of this Court under Section 165 of the Evidence Act, a Presiding Judge has inherent power to put questions and order production of documents. In order to do justice between the parties, the Court has ordered permitting the documents sought to be produced on record.

Learned counsel for the defendants i.e. petitioners in Civil Revision No.2547 of 2017 has submitted that in fact this litigation is a proxy litigation as Ram Singh had earlier filed a similar suit in which he lost.

Be that as it may, the suit filed by the plaintiff is at the final stage. Taking into consideration the facts in totality, this Court is of the considered opinion that the trial Court has correctly permitted the production of the revenue record. However, the amendment with regard to the legal objection is not found necessary.

The legal objection taken by the plaintiff and the revenue record produced on the file shall not be rejected by the Court from consideration while deciding the suit on the ground that such facts are

beyond pleadings.

Revision petitions are disposed of.

However, the learned trial Court is directed to decide the case within two months from the date of receipt of certified copy of this order.

At this stage, learned counsel for the defendants seeks permission to rebut the documents which have been placed on file. Learned counsel for the plaintiff does not have any serious objection. The defendant shall be granted one opportunity to produce evidence to rebut the documents taken on file.

14.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No