

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

CR No.2371 of 2018 (O&M)

Date of decision: 16.04.2018

Ujjal Singh

..... Petitioner

Versus

Gurmit Kaur Bains and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in the revision petition against the order passed by the learned trial Court dated 19.03.2018 deciding issues No.3, 4 and 6 as preliminary issues and thereafter fixing the case for remaining evidence of the plaintiff on remaining issues. The suit was instituted on 20.04.2011. Initially, the learned trial Court decided the objection with regard to non-payment of ad valorem Court fee which was challenged in this Court and this Court vide order dated 09.02.2018 directed the trial Court to decide issues No.3, 4 and 6 afresh as preliminary issues.

Learned trial Court after recording some evidence has passed an order wherein although the issues had been decided against the plaintiff and in favour of the defendants but still the case has been fixed for evidence on the remaining issues.

The issues as framed by the Court on 23.09.2013 are extracted

as under:-

- “1. Whether the plaintiff is entitled to declaration and partition as prayed for?OPP*
- 2. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 3. Whether the present suit is barred by limitation?OPD*
- 4. Whether the present suit is not properly valued for the purpose of court fee and jurisdiction?OPD*
- 5. Whether the plaintiff has suppressed the material facts from the court, if so, its effect?OPD*
- 6. Whether the present suit is not maintainable in the present form?OPD*
- 7. Relief.”*

It is not disputed before this Court that while before passing the impugned order, the learned trial Court had granted opportunity to the parties to lead evidence. Learned trial Court thereafter proceeded to adjudicate upon issues No.3, 4 and 6 as directed by this Court. However, looking into the fact that the learned trial Court was totally confused while passing the order as on the one hand, the learned trial Court held that the suit filed by the plaintiff is not maintainable and hence, issue has been decided against the plaintiff and in favour of the defendants but still fixed the case for remaining evidence. Still further, the learned trial Court while passing the order has held that the suit is not barred by limitation and the plaint is not liable to be rejected on the ground of insufficiency of the Court fee affixed or the Court has not jurisdiction to deal with them. However, as noticed earlier, the suit filed by the plaintiff was held to be not maintainable but the Court still fixed the case for remaining evidence on remaining issues.

As per Order 14 Rule 2 of Code of Civil Procedure,

preliminary issue could be decided by the Court only in two eventualities as envisaged in the Code of Civil Procedure. Order 14 Rule 2 is extracted as under:-

“2. Court to pronounce judgment on all issues.

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

A careful reading of the aforesaid provision would prove that the preliminary issue could only be treated in case it relates to the jurisdiction of the Court or it relates to a bar to the suit created by any law. The question of limitation is to be decided on the basis of evidence to be led. This is not pure question of law. It is depended upon the fact and situation in a particular case. Issues No.4 and 6 does not relate to a bar to the suit created by any law.

Be that as it may, the suit is pending for the last seven years. This may be one of the oldest suit pending before the Court.

In view of the aforesaid facts, the learned trial Court is requested to proceed with the decision of the case on merits. While deciding the case on merits, the learned trial Court would not be influenced by the order passed by the learned trial Court on 19.03.2018 and the learned

trial Court would re-decide all the issues afresh after allowing the parties to lead their complete evidence.

The already led evidence by the parties would be taken into consideration by the Court while deciding the main case. The parties would be at liberty to lead further evidence on all issues.

Since the suit is old and pending for the last seven years, therefore, the learned trial Court is requested to expedite the trial and decide the same, within a period of one year and six months, from the date of receipt of a certified copy of this order.

Since this order has been passed without issuing notice to the plaintiff, therefore, the plaintiff would be at liberty to file an application for recall of the same, if aggrieved.

With these observations, the revision petition is disposed of.

16.04.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No