

In the High Court of Punjab and Haryana at Chandigarh

211

**CR No.3345 of 2014 (O&M)
Date of decision: 15.10.2018**

CHAND SINGH

.....petitioner

Versus

GURDIT AND ORS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jai Bhagwan, Advocate,
for the petitioner.

Mr. Anil Kumar Garg, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.(oral)

Petitioner has assiled the order dated 22.2.2014 passed by Civil Judge (Jr.Divn.) Malerkotla, whereby application under Order 14 Rule 5 read with Section 151 CPC filed by plaintiff-petitioner for framing of additional issue was dismsed.

Plaintiffs filed a suit for declaration to the effect that they are owners in possession of land in question on the basis of sale deed dated 8.3.1957 and Will dated 4.4.1964 executed by Inder Singh, grandfather of the plaintiffs and Will dated 14.3.1997 executed by Gurdit Singh, father of the plaintiffs on

the basis of family settlement dated 10.5.1998.

Evidently, the modes of acquiring suit property were two Wills and one family settlement. Both the parties went to trial after completion of pleadings. Issue No.1 is to the following effect:-

“whether plaintiff is entitled for declaration as prayed for ? OPP.”

After framing of the issues, plaintiffs have already led their evidence and their evidence was closed when learned counsel for the plaintiffs made a statement to that effect on 25.7.2012. Thereafter, the case was adjourned for defendants' evidence. Order dated 25.7.2012 passed by the trial Court, closing the evidence of the plaintiffs, was never assailed by the plaintiffs and there is no challenge in the present revision petition. The application filed by the petitioner/ plaintiff No.1 for framing additional issue was dismissed by the trial Court on the premise that issue No.1 would suffice to answer the claim of the plaintiffs on all the three modes of acquiring the property.

Learned counsel for the appellant has relied upon **Shri Jagdish Chander vs. Bank of India 1999 (1) RCR (Civil) 92;**
Krishna Saigal vs. Kamal Kumar Modi and another 2002 (3) RCR (Civil) 790; **Sher Singh vs. General Public 2001 (3)**

RCR (Civil) 780; Rajinder Tandon vs. Thomas Nasir Masih 1999 (1) RCR (Civil) 539; S.Madaiah vs. Siddanaika 1996 (2) CivCC 97; Perikal Malappa vs. T.Venkatesh Gupta 2007 (5) RCR (Civil) 252 and Shraddha Associates, Pune and another vs. St.Patrick's Town Cooperative Housing Society Ltd. And others 2003 (2) CivCC 627.

A perusal of the aforesaid precedents would show that there cannot be any dispute with regard to proposition of law as enunciated in the aforesaid precedents. The fact remains whether issue No.1 is wide enough to cover the controversy on all the three parameters of acquiring land by the plaintiffs by virtue of two Wills and one family settlement. There was no impediment in the way of the plaintiffs to lead evidence. The plaintiffs have already concluded their evidence and after closing of the same voluntarily, they have not opted to challenge the order dated 25.7.2012, even in the present revision petition. Even if it is taken to be correct that the additional issue can be framed at any stage of litigation, if it is necessary for just decision of the case, the facts of the case have to be appreciated in the light of the original issue on record, wherein grant of declaration is dependent upon claims set up by the plaintiffs on the basis of two Wills and one family settlement.

Evidently, the plaintiffs have already concluded their

evidence on issue No.1. The order closing evidence has not been assailed.

In my considered opinion, issue No.1 already on record would suffice to answer the claims of the plaintiffs in the suit for which they have already concluded their evidence. Hence, no indulgence can be granted by this Court.

Accordingly, this petition is dismissed.

October 15, 2018
anita

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No