

CR No.3436 of 2017

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3436 of 2017

Date of Decision 04.04.2018

Mrs.Harinder Ghuman W/o Harcharan Singh Ghuman.....

.....Petitioner

Vs.

Lt.Col.Paramjit Singh Dhillon and Ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:-

Mr.Alok Jain, Advocate, for the petitioner.

Mr.G.S.Punia, Sr.Advocate, with

Mr.H.S.Punia, Advocate, for the respondents.

RITU BAHRI, J. (ORAL)

The present revision has been filed against the order dated 15.04.2017 (Annexure P-1) whereby application under Order 14 Rule 2(1) CPC (Annexure P-2) for deciding the additional issues 3-A and 3-B as preliminary issues has been dismissed.

The brief facts of the case are that the petitioner herein had filed prior suits CS(OS) 373 of 2012 on 14.02.2012, at Delhi, for partition and permanent injunction in respect of property situated at Delhi, Chandigarh and Punjab, before the Hon'ble Delhi High Court. Plaintiff-respondent No.1 who was on caveat, had placed reliance on Will dated 22.08.2011 (unregistered) executed by Late Kultar Singh, father of petitioner herein and plaintiff-respondent No.1 herein and parties were restrained from alienating, disposing of or creating 3rd party interest with regard to the title of position

without the leave of the Court till the disposal of the suit vide Order dated 21.10.2013 and thereafter the following issues were framed on 30.01.2015 (Annexure P-4) before the Delhi High Court and the matter was referred to the Mediation vide order dated 30.01.2015. Thereafter, petitioner gave her evidence as PW-1 vide affidavit on 07.01.2016 in the Delhi High Court and plaintiff-respondent No.1 herein preferred an application dated 22.01.2016 under Order 7 Rule 11 CPC which was dismissed vide order dated 27.01.2016 (Annexure P-6).

Respondent No.1 to 3 thereafter filed a suit No.121/12 on 05.05.2012 at Nawanshahar, for declaration that Plaintiff-respondents No.1 to 3 were owners in possession of the suit property on the strength of a Will dated 22.08.2011 executed by late Kultar Singh who was father of the petitioner and respondent No.1 herein. The property at Nawanshar was not acquired by father in any manner whatsoever but was included as suit property to confer jurisdiction on Courts at Nawanshahar. Petitioner herein appeared on 17.05.2012 and filed an application under Section 10 CPC for stay of the suit as was evident from Zimni Order dated 17.05.2012 and filed an application under Section 10 CPC for stay of the suit as was evident from Zimni Order dated 17.05.2012 and reply was filed on 29.05.2012. During the pendency of Mediation proceedings which were going on in the matter before the Delhi High Court, petitioner immediately filed an application for adjudication of application under Section 10 CPC which was dismissed vide order dated 21.08.2015 (Annexure P-7). This order was challenged by CR No.5883 of 2015 and this revision petition was withdrawn on 09.09.2015 with liberty to file an appropriate application before Hon'ble the Supreme

2015 was preferred in the Apex Court which was dismissed as withdrawn vide order dated 05.10.2015. Thereafter, CM No.24175 of 2016 was filed in this High Court for recalling the Order dated 09.09.2015 in CR No.5883 of 2015 but the same was not entertained vide order dated 12.01.2016 as they have been filed through some other counsel. Thereafter, RA74-CII-2016 was filed in this High Court clarifying that no objection was obtained from earlier counsel but the same was also dismissed vide order dated 05.04.2016.

Thereafter, an application under Order 7 Rule 11 CPC was filed by the petitioner asserting that suit in respect of estate of Late Kultar Singh could not be lodged at Nawanshahar as the property situate at Nawansahar originally belonged to Smt.Jatinder Kaur having inherited from her parental side and after her death, it could not be entertained by her husband. The application was dismissed by the trial Court vide order dated 03.09.2016 (Annexure P-8). However, learned trial Court permitted amendment of the written statement vide order dated 26.09.2016 and framed additional issues 3A and 3B as under:-

“3A. Whether Kultar Singh had inherited the suit property situated at Nawanshahar from Jatinder kaur his wife? OPD

3B. Whether Kultar Singh had no inheritable right in the property of Jatinder Kaur his wife inherited by her from her parents? OPD.”

The petitioner thereafter, made an application (Annexure P-2) for deciding the additional issues as preliminary issue as this application has been dismissed vide impugned order dated 15.04.2017 (Annexure P-1).

While dismissing the said application, the learned trial Court had observed that after the death of Jatinder Kaur-mother of the petitioner,

her estate devolved upon her son, daughter and her husband as per natural succession to the extent of 1/3rd share each. After inheriting the property by way of natural succession, applicant/defendant No.1 who was daughter of Jatinder Kaur deceased and Kultar Singh and sister of plaintiff Paramjit Singh had sold some part of the property jointly with her father and brother and the copy of the said sale deed was placed on record. The application questioning the jurisdiction of the Court at the threshold of the suit is an abuse of process of law. The defendant kept on watching the proceedings of the trial and after framing of issues, the matter was posted for evidence of the plaintiff whereby defendants were again directed to cross-examination in PWs, now again defendant No.1/had come up with another application for treating the issue of jurisdiction as preliminary issue and to take evidence only qua said issue only and not to proceed with other issues;

Mr.Alok Jain, Advocate, learned counsel for the petitioner has argued that the suit filed for partition by her in Delhi and the declaration can be made qua the share of all the co-sharers with respect to the property at Nawanshahar, the same was belonged to Jatinder Kaur-mother of the petitioner which was inherited from her own father. The respondents No.1 to 3 filed had filed a suit in Nawanshahar and he should only proceed with respect to the suit property left by her mother Jatinder Kaur and then issues No.3A and 3B were now framed. Hence, they had to decide as preliminary issue without first examining the evidence with regard to sale deed which was available on record. He has referred to the issues framed before the Delhi High court where issue No.2 was with respect of the validity of the Will dated 22.08.2011 and on this issue the defendants have to lead their evidence. He has referred to the judgment of the Delhi High Court in the

case of Mohammed Yasin Vs. Abdul Kalam and another 1987 (32) DLT 143 and other judgment in support of his contention.

After hearing counsel for the parties, this petition deserves to be dismissed. The trial Court has rightly dismissed the application under Order 14 Rule 2(1) of CPC.

In the facts of the present case, after the death of Jatinder Kaur-mother of the petitioner, learned trial Court vide order dated 26.09.2016 framed additional issue i.e. 3A and 3B. The present suit was filed in May, 2012, wherein defendant No.1 was contesting the claim of the plaintiffs from the very beginning while other defendants were proceeded ex-parte. After framing of issues, the matter was fixed for evidence of the plaintiff on 06.08.2014 and thereafter the matter remained adjourned for some time for compromise the proceedings inter se the parties. Thereafter, an application was moved under Section 151 CPC and another application under Order 01 Rule 10 CPC. Thereafter, the matter was adjourned from time to time and after framing issues, the matter was posted for evidence of the plaintiff on 16.11.2016 but thereafter, defendant No.1 got filed applications from her sisters who were earlier exparte, for setting aside the exparte proceedings and then the exparte proceedings qua them were set aside at the very beginning and again the case was fixed for evidence of the plaintiff whereby defendants were again directed to cross-examine the prosecution witnesses but rather than cross-examining the prosecution witnesses, now again defendant No.1/applicant had come up with another application for treating the issues of jurisdiction as preliminary issue and to take evidence only qua said issue and not proceed with other issues.

this Court in the case of M/s Saraswati Spinning Mills Vs. M/s Gheru Lal Bal Chand 1980 (2) RCJ 380 wherein, decision rendered by the trial Court that a particular issued should not be treated as a preliminary issue. The Order 14 Rule (2(1) CPC is 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 plain reading of this rule shows that the legislature had expressed disapproval of piecemeal trial of suits and even with regard to the two categories of issues mentioned above, the Court has been left with a wide discretion to treat them as preliminary issues or not.

In M/s Saraswati Spinning Mills (supra), the Division Bench has further held that the decision of the trial Court whether an issue treated as preliminary issue and it is also held that normally should not be opened to challenge to proceed under Section 115 CPC. In paragraph 2 of the Division Bench has observed as under:

“ A plain reading of this rule shows that the Legislature has expressed disapproval of piecemeal trial of suits and even with regard to the two categories of issues mentioned above, the Court has been left with a wide discretion to treat them as preliminary issues or not. We are unable to find any support for the argument raised by the learned counsel for the petitioner from the language of

the statue as it emerges after amendment. In any event, it has not been shown that any injustice has been done to the petitioner because of the decision rendered by the learned trial Court that a particular issue should not be treated as a preliminary issue. Normally speaking, such a decision is not open to challenge in proceedings under Section 115, Civil Procedure Code. There is no merit in this petition which is hereby dismissed with costs”

In the present case, the trial is pending since 4 years and after 26.09.2016 the additional issues were framed as 3A and 3B. The trial Court has rightly dismissed the application annexure P-2 vide impugned order Annexure P-1 on the ground that there was nothing in the abovesaid matter for taking the evidence exclusively on the issued of jurisdiction for husband had equal inheritable rights along with children in the property of his deceased wife. It has also been mentioned that applicant/defendant No.1 who was real sister of plaintiff No.1 and daughter of Kultar Singh was well aware of each and every circumstances of proceedings from the very initial stage but her conduct showed that applications were being moved by her and some of the applications have been got moved by her from co-defendants just for prolonging the litigation for admittedly, defendant No.1 and her husband were residing together. Moreover, earlier defendant No.1 and her husband were residing together. Moreover, earlier two applications qua jurisdiction were moved by defendants which were decided by this court and the order qua that applications remained affirmed till the Hon'ble High Court. Now, against they have come up with this application with the averments that this suit was barred by jurisdiction on the basis of inheritable rights of husband in the property of his wife. The arguments of the

defendants themselves reflect that their said plea was not tenable atleast at this stage.

So in the light of the discussion, the trial Court had rightly dismissed the application under Order 14 Rule 2(1) CPC and declined the prayer of the defendant-petitioner praying that the additional issues framed by order dated 26.09.2016 as 3-A and 3-B should be decided as preliminary issue vide the impugned order dated 15.04.2017. The order which does not reflect any material irregularity or perversity which warranting interference. Hence the present revision stands dismissed.

(RITU BAHRI)
JUDGE

04.04.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No