

CR No.34 of 2018 (O&M)

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

216

**CR No.34 of 2018 (O&M)
Date of Decision : 14.12.2018**

CAPTAIN HARMINDER SINGH AND OTHERS

....PETITIONERS

V/S

LAKHBIR KAUR @ JYOTI

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate
for the petitioners.

Mr. Ajiteshwar Singh, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 24.10.2017, whereby an application submitted by the respondent-plaintiff for serving the interrogatories, 12 in number, have been confined from 4 to 12.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Abhishek Bajaj, Advocate, appearing on behalf of the petitioners-defendants submitted that unfortunately the marriage between petitioner No.2 -Vikramvir Singh and respondent-Lakhbir Kaur @ Jyoti was dissolved vide a decree of divorce at Norway in November, 2015. The respondent-plaintiff filed the suit on 06.12.2014 but before that there was already a decree of separation and the parties were already living separately. The respondent-plaintiff during the

period of separation instituted the suit bearing Civil Suit No.2641 of 2014 in the Court at Jalandhar claiming the following relief:-

“ Suit for declaration that plaintiff is joint owner in possession of the property to the extent of 1/4th share in SCO No.85-C measuring 266.66 sq. yards joint owner in possession of 06K-14M being 1/6 share in the land measuring 33K-10M comprising in Khewat no.344 Khatauni no.313 Khasra no.1//22/2(5-13), 26//11/3(3-5), 26//20/1(4-7), 26//21/1(2-3), 27//16/2(0-2), 27//25/4(0-3) Khewat no.245 Khatauni no.314 Khasra no.1//7(1-7), 1//8(2-17//13/2/2(0-5), 26//11/1(1-11), 26//20/3(1-11), 27//15/4(0-8), 27//16/1(0-10) as per the Jamabandi for the year 2011-2012 for Villagae Jagral Hadbast No.255, Tehsil & Distt. Jalandhar-I and is also joint owner in possession of any other property purchased by the defendant no.1 anywhere in India after his marriage with plaintiff out of the common joint family earnings of the Plaintiff and the defendant no.1.

And

Suit for separate possession of the property out of the property mentioned above failing to her share of the plaintiff by the partition of the same by meats and bounds.

And

and further suit of plaintiff for MESNE profits earned by the defendants out of the property falling to the share of the plaintiff as assessed by this Hon'ble court from the date of purchase of every property mentioned above till the separate possession of the property be handed over to the plaintiff be also decreed in favour of the plaintiff in the interest of justice.

And

Suit for permanent injunction restraining the defendants, their agents, assignees and attorneys from mortgaging, selling, alienating and transferring the property SCO No.85-C measuring 266.66 sq. yards Urban Estate, Phase II Jalandhar City and also restraining the defendants, their agents, assignees and attorneys from mortgaging, selling, alienating and

transferring the property measuring 13K-08M being 1/3 of 33K-10M comprising in Khewat no.344 Khatauni no.313 Khasra no.1//22/2(5-13), 26//11/3(3-5), 26//20/1(4-7), 26//21/1(2-3), 27//16/2(0-2), 27//25/4(0-3), Khewat no.245, Khatauni no.314 Khasra no.1//7(1-7), 1//8(2-9), 1//13/1(2-14), 1//14/1(4-0), 1//15/1(3-2), 17//13/2/2(0-5), 26//11/1(1-11), 26//20/3(1-11), 27//15/4(0-8), 27//16/1(0-10) as per the Jamabandi for the year 2011-2012 for Village Jagral Hadbast 255, Tehsil & Dist. Jalandhar.”

From the head note of the aforementioned suit, plaintiff attempted to claim the ownership by taking the aid of sub Section 3 of Section 4 of *Prohibition of Benami Property Transactions Act, 1988*, in fact the suit property is not only in the ownership of the husband but along with the other family members. The interrogatories sought tantamounts to shift the burden as the onus to prove the claim of ownership heavily lays upon the plaintiff and thus urges this Court for setting aside the order.

Mr. Ajiteshwar Singh, learned counsel appearing on behalf of the respondent submitted that the respondent-plaintiff is not in possession of the aforementioned documents and the legislation in its wisdom has incorporated provisions of Order 11 Rule 12 of the Code of Civil Procedure to cut short the lengthy cross-examination and submit the parties to lead evidence only on those points on which they are at variance. Since, the properties subject matter of the suit have been purchased out of the account of the respondent-plaintiff and in the absence of any documentary evidence in her possession, the interrogatories were inevitable and prays for dismissal of the petition.

I have heard learned counsel for the parties and appraised the paper book.

The interrogatories which have been directed to answer by the petitioners vide impugned order read as under:-

- “4. Is it correct that you the defendant no.1 have made all the payments of your share of installments of the SCO No.85 Urban Estate Phase-II Jalandhar after your marriage with the plaintiff.*
- 5. How many times and on which dates defendant no.1 came to India through Indra Gandhi Air port Delhi and Amritsar Airport.*
- 6. What amount of foreign / Indian currency was declared by the defendant no.1 on each visit to India at the airport at the time of his landing in India.*
- 7. What are the names of banks and branch in which the defendant no.1 was having his account in India after the marriage with the plaintiff and what is the account no. of each account.*
- 8. What were the movable and immovable properties purchased in the name of the defendant no.1 in all over the India?*
- 9. What are the names of the firms where the defendant no.1 is partner and what is the share of defendant no.1 in each of those firms and what are the total assets and annual income of the each of those firms?*
- 10. What are the names of the Companies where the defendant no.1 is a director/ Share holder and what is the share of the defendant no.1 and each company what are the total assets of the each of those Companies.*
- 11. How much agricultural and commercial property was purchased in the name of the defendant no.1. What is the Description of each property and what is the annual income from each property.*
- 12. Is it correct that the defendant no.1 is having ancestral and self purchased agricultural and commercial property in his name in U.P. As well as is District Kapurthala and Jalandhar? If yes description of the property and date of mutation of the properly in the name of defendant no.1.”*

On simple perusal of the interrogatories coupled with the relief sought in the plaint, I am of the considered view that in order to establish the ownership in the suit property, the plaintiff has to stand on his own leg by discharging the onus under Section 101 of the Indian Evidence Act. If at all certain documents would not be available, it does not prevent the plaintiff to move an appropriate application for production and take the advantage of adverse inference in case the other party refuses to. Apparently, the interrogatories, establish the dwindling mind of the plaintiff, was not according to the relief as in the suit. For the foundation of the suit, it has to be on a firm strong opinion and belief, much less the evidence, as the civil suit is not only proceeded on the pleadings, but on evidence as well. The application was only for serving interrogatories on petitioner No.2-Vikramvir Singh (defendant No.1). The trial Court in my view escaped notice of the aforementioned facts and the provisions of law, resultantly the impugned order dated 24.10.2017 is set aside.

Revision petition stands **allowed**.

(AMIT RAWAL)
JUDGE

December 14, 2018

rajneesh

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No