

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

C.R.No.4741 of 2016

Kulwant Kaur @ Harjinder Kaur

....Petitioner

Versus

Pupinder Kaur and Anr.

....Respondents

Date of Order: 12.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate for the petitioner.

Mr. Sukhjit Singh, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

Defendant No.1-petitioner is aggrieved of the impugned order dated 20.5.2016 whereby her application filed under Order 7 Rule 11 CPC for rejection of plaint has been dismissed.

The plaintiff filed a suit for declaration in respect of the land measuring 8 kanal 9 marla and joint possession on the premise of having half share in the land being coparcener and half share on the basis of natural succession in respect of the estate of Harbans Singh deceased after setting aside of will dated 30.3.1999 allegedly executed by Harbans Singh in favour of defendant No.1.

Learned counsel for the petitioner submitted that the respondent-plaintiffs were required to pay ad valorem court fee inasmuch as they are not party to the alleged gift deed dated 27.11.2013 but the trial Court while dismissing the application has erroneously struck off of the defence of the petitioner-defendant. He submitted that it was the plaintiff-

respondents who were seeking adjournments time and again so the trial Court ought to have granted one opportunity to the petitioner.

Learned counsel for the respondent submitted that the plaintiff affixed the ad valorem court fee as per the relief sought. It was deliberate attempt of the petitioner to delay the adjudication of the suit and therefore the defence has rightly been struck off, therefore, prayed for dismissal of the petition.

After hearing learned counsel for the parties and appraising the paper book, I find no merit in the present petition. The following relief has been claimed by the plaintiff in the said suit:

“Suit for declaration to the effect that the land measuring 8K-9M detailed as under:

“A. Land measuring 0K-6M being ½ share out of the land measuring 1K-4M comprising Khewat/Khatauni No.848/954, Khasra No.272;

B. Land measuring 8K-3M comprising Khewat/Khatuni No.849/955, Rect No.37, Killa Nos.12/3, 13/1/3; as entered in the Jamabandi for the year 2007-2008, situated in the area of Village Sidhwan Kalan (H.B No.61) Tehsil Jagraon District Ludhiana; which was recorded in the name of Harbans Singh son of Gulzar Singh is the joint Hindu family coparcenary property and that the plaintiff has a valid ½ share in the same by virtue of her birth.

AND suit for the joint possession of the suit land in the following manners:

a) ½ share being coparcener;

b) ½ on the basis of natural succession of the estate of Harbans Singh deceased after setting aside the alleged Will dated 30.03.1999, Vasika No.628 alleged to have been executed by Harbans Singh deceased in

favour of the defendant No.1 and the mutation No.6925 wrongly sanctioned thereof; the same being illegal, void, forged, fictitious, fabricated document in violation of principle of natural justice, result of impersonation and fraud committed by the defendant No.1 in connivance with the scribe and the marginal witnesses and the same is not binding on the plaintiff and also after getting setting aside the alleged Giftr deed dated 27.11.2013, Vasika No.3559 alleged to have been executed by the defendant No.1 in favour of defendant No.2 the same being illegal, void, incompetent, unauthorized, against the relevant provisions of the law and not binding on the rights of the plaintiff;

AND as a consequential relief suit for the grant of permanent injunction restraining the defendants from changing the present nature of the suit land by way of raising the construction or some other manners illegally and forcibly and further restraining the defendant No.2 from alienating in any manner any part of the suit land to any other person; on the basis of oral and documentary evidence.”

It is conceded position that the plaintiff is not party to the alleged gift deed dated 27.11.2013, which has been executed by defendant No.1 in favour of defendant No.2 and therefore she was not required to affix ad valorem court fee. As regards closing of the defence of the petitioner, I am of the considered opinion that the trial Court ought to have granted one opportunity to file the written statement subject to any terms and conditions. Aforesaid suit was filed on 12.1.2015 whereas the application was filed on 20.2.2015, which had been dismissed vide impugned order dated 20.5.2016. In my view the approach of the petitioner-defendant had been lackadaisical, but despite that in order to prevent miscarriage of justice and to meet the

ends of justice, I deem it appropriate to grant one opportunity to the petitioner-defendant to file written statement within 15 days from the date of receipt of certified copy of this order.

Accordingly, the present petition is partly allowed and the impugned order is set aside only to the aforesaid extent subject to payment of Rs.5000/- as costs to be paid to the respondent-plaintiff, which shall be a condition precedent.

March 12, 2018
manoj

^(AMIT RAWAL)
JUDGE

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