

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

**CR-5521-2016 (O&M)
Date of decision : 2.5.2018**

Kulbir Singh

.....Petitioner.

Versus

Paramjit Kaur and others

..... Respondents.

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Jasuja, Advocate for the petitioner.

Mr. Ramesh Sharma, Advocate for the respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 29.7.2016 (Annexure P-6), passed by learned Civil Judge (Junior Division), Fazilka, vide which an application filed by the defendants for not allowing the plaintiff to lead rebuttal evidence was dismissed and plaintiff was allowed to lead rebuttal evidence to examine the expert witness.

Heard.

It is necessary to go into the background of the case. Paramjit Kaur has filed a suit against Kulbir Singh son of Gurdeep Singh and Veerpal Kaur (since deceased), who is the daughter of Gurdeep Singh claiming that she is the daughter of Gurdeep Singh and entitled to 1/3rd share of the suit land left behind by his mother Gurdev Kaur wife of Gurdeep Singh and that Will dated 7.7.2009 registered on 15.6.2012

executed by Gurdev Kaur wife of Gurdeep Singh is illegal, forged and fabricated. She also claimed that suit property is a joint Hindu family, ancestral and co-parcenary property. She further claimed that Will does not bear the signatures of Gurdev Kaur and is a forged one. Copy of the written statement shows that defendants No. 1 and 2 took the plea that plaintiff is the adoptive daughter of Ajit Singh @ Jeet Singh, who was the real brother of Gurdeep Singh-father of the defendants and Kartar Kaur who was issueless. Therefore, plaintiff having been adopted by Ajit Singh @ Jeet Singh and Kartar Kaur, lost her rights in the adoptive family.

Learned Civil Judge (Junior Division) framed the following issues on 3.8.2013: -

1. Whether the plaintiff is entitled to relief of declaration as prayed for ? OPP.
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP.
3. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.
4. Whether plaintiff has concealed the material facts from this Court? OPD.
5. Relief.

I am of the view that the entire controversy has arisen because of non framing of the proper issues. In this case issues which were required to be specifically framed are as under: -

- (1) Whether the plaintiff is the adoptive daughter of Ajit Singh @ Jeet Singh and Kartar Kaur, as claimed by defendants? OPD.
- (2) Whether the suit property is ancestral and joint Hindu property qua plaintiff No. 3? OPP.

3) Whether Gurdev Kaur executed a Will dated 7.7.2009 in favour of defendants? OPD.

The case is still at the stage of rebuttal evidence. I am of the view that due to non framing of the necessary and proper issues, question will arise in future before the learned Court and the Superior Courts in recording the findings of the fact which are being contested by the parties. Therefore, exercising the inherent powers, learned trial Court is directed to frame the following issues: -

1A. Whether the plaintiff is the adoptive daughter of Ajit Singh @ Jeet Singh and Kartar Kaur, as claimed by defendants? OPD.

1B. Whether the suit property is ancestral and joint Hindu property qua plaintiff? OPP.

1C. Whether Gurdev Kaur executed a valid registered Will dated 7.7.2009 registered on 15.6.2012 in favour of defendant No.1? OPD1.

In the light of framing of the issues, I am of the view that plaintiff shall be entitled to lead affirmative evidence on issue No. 1B and defendants will be entitled to lead evidence on additional issues No. 1A and 1C and, thereafter, plaintiff shall be entitled to lead evidence in rebuttal.

Consequently, impugned order dated 29.7.2016 (Annexure P-6), passed by learned Civil Judge (Junior Division), Fazilka is set aside and shall be replaced by the order passed by this Court.

It is further directed that since this case pertains to the year 2013, learned trial Court after receipt of the certified copy of this order will grant short adjournment of not more than one week to both the parties

to produce the said evidence and conclude the trial within three months from the date of receipt of the certified copy of this order.

Both the parties are also made aware that they should be ready to lead their evidence which they want to produce so that time of the trial Court is not wasted.

Accordingly, present petition is disposed of.

Since the main petition is allowed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

2.5.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No