

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6102 of 2018(O&M)
Date of Decision: 13.09.2018

Gurdeep Singh
Versus
Jagtar Singh and others

.....Petitioner
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

RAJ MOHAN SINGH, J.(Oral)

[1]. Two different orders have been assailed in the present revision petition. Applications under Order 1 Rule 10 CPC and under Section 151 CPC for additional evidence were dismissed by the trial Court vide the impugned orders.

[2]. The application under Order 1 Rule 10 CPC was filed by the plaintiff/petitioner on the ground that all the co-sharers of the land have not been impleaded by the earlier counsel. The case was remanded by the Lower Appellate Court to decide the suit afresh on the basis of evidence already on record.

[3]. Trial Court dismissed the prayer on the ground that addition of parties would amount to *de novo* trial as the added parties would have the right of filing written statement and

leading evidence. Very spirit of remand order would be frustrated. The remand order was passed only on technical defect in the judgment and decree dated 30.04.2015. Trial Court has observed that all the co-sharers are not even necessary parties as the plaintiff has sought declaration to the extent of his share against defendants No.1 to 3 who have denied his rights in the property.

[4]. During trial of the suit which was filed on 29.02.2012, no such petition was filed nor any objection was filed before the Lower Appellate Court who remanded the case. It was only on account of super-session of earlier counsel, the plea has been carved out by the new counsel in order to justify his engagement.

[5]. The application was dismissed by the trial Court with a cost of Rs.2000/-. Since the prayer for impleadment in terms of Order 1 Rule 10 CPC was declined, therefore, scope of additional evidence was also negated. Consequently, the second application was also dismissed.

[6]. Having heard learned counsel for the petitioner, I also endorse the order passed by the trial Court simply for the reasons that the scope of earlier order is not to re-open the gate afresh, inviting filing of written statement by the proposed defendants and to allow them to lead evidence, particularly

when the plaintiff has sought declaration only to the extent of his share as against defendants No.1 to 3 who have denied his entitlement. Plaintiff cannot be allowed to go beyond the scope of remand order. No such plea was taken before the trial Court as well as before the Lower Appellate Court when the case was remanded to the trial Court for fresh decision on the basis of evidence available on record. The second prayer for leading additional evidence is totally dependent upon the first prayer, therefore, I do not find any justification to interfere in the impugned orders passed by the trial Court. This revision petition is accordingly dismissed.

September 13, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No