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

CR-8950-2017

Date of decision : 05.04.2018

Rajinder Kaur

... Petitioner(s)

Versus

Darshan Dass and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Prashant Bansal, Advocate
for the petitioner.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order dated 17.11.2017, whereby an application for the respondents-plaintiffs for framing of the additional issues has been allowed.

Mr. Prashant Bansal, learned counsel appearing on behalf of the petitioner-defendant submitted that the respondent-plaintiff filed the suit for declaration to the effect that the plaintiff and the defendants are joint owners in possession of the agricultural land on the basis of the inheritance of Santokh Dass and with a consequential relief of injunction restraining the defendant No.1 from alienating the suit property. In the written statement, the petitioner-defendant had propounded the Will dated 01.09.1998 executed by Santokh Dass, father of the plaintiff. It was incumbent upon the respondents-plaintiffs to lead the evidence in affirmative by taking the assistance of the Expert. However, at the final stage, an application was

moved for examining the Expert by way of rebuttal evidence. The said application was dismissed and the matter reached upto this Court in CR No.6881 of 2015 and the aforementioned revision vide order dated 27.10.2017 was disposed of with a direction to the trial Court to decide the application afresh. In the meantime, respondents-plaintiffs filed an application claiming two fold relief i.e. assistance of the Expert and framing of the additional issues. However, the trial Court without adjudication of application seeking assistance of Expert framed the additional issues, therefore, there is fallacy and the impugned order is not sustainable in the eyes of law. The plaintiffs had failed to reserve the right to lead evidence in rebuttal while closing the evidence in affirmative, which is evident from statement dated 25.11.2014, extracted in para 4 of the revision petition, thus, urges this Court for setting aside the impugned order by allowing the present revision petition.

Service upon the respondents had already been effected on 22.02.2018, but there is no representation on behalf of the respondents. Accordingly, I proceed to decide the present revision petition on merits.

I have heard the learned counsel for the petitioner-defendant and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Bansal.

The trial Court on the basis of the pleadings had already framed the following issues:-

- 1. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is maintainable in the*

present form? OPD

4. *Whether the plaintiff has not come to this Court with clean hands and has suppressed true and material facts? OPD*
5. *Whether the plaintiff has no locus standi to file the present suit? OPD*
6. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
7. *Whether the plaintiff is stopped from filing the present suit by his act and conduct.*
8. *Whether no cause of action to file the present suit? OPD*
9. *Whether the suit of the plaintiff is time barred? OPD*
10. *Relief.*

On perusal of the aforementioned issues, it is evident that no such issue on the Will had been framed.

Mr. Prashant Bansal, has very fairly conceded before this Court that the petitioner-defendant has also not examined any Expert. Perhaps both the parties were aware of the issues and in the absence of any issue on the Will, they did not lead any evidence. The trial Court, in my view, has correctly framed the additional issues, for, the bone of the contention between the parties is Will, for the plaintiff has claimed the relief on the basis of the natural succession.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the impugned order, under challenge and do not call for interference, much less, it cannot be said to be under the garb of additional evidence or under inherent powers tantamount to fill up the lacuna at the behest of the plaintiffs.

The onus of issue has been placed upon the plaintiffs. The petitioner-defendant would be also having right to rebut the same in accordance with law.

With the aforementioned observations, the present revision
petition stands dismissed.

05.04.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No