

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

Civil Revision No.4812 of 2018
Date of Decision: January 25, 2019

Jaswinder Singh & another

...Petitioners

Versus

Harpal Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Parampreet Singh Paul, Advocate,
for the petitioners.

Mr. H.K.Brinda, Advocate,
for respondent Nos.1 & 3.

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order dated 31.05.2018, whereby the application of the petitioners for framing the following additional issues, has been dismissed:-

“1) *Whether the plaintiff is owner in possession of the land on the basis of the sale deed?*

2) *Whether in lieu of the earlier litigation Harpal Kaur is estopped from her act and conduct to claim the ownership over the suit property and to file the suit?*

3) *Whether the judgment passed by the Id.court of Mrs. Mandeep Kaur Bedi, Civil Judge Senior Division Ropar on 16.4.2011 operates resjudicata?*

4) *Whether the present suit is barred against the defendants and it operates resjudicata?*

5) *Whether proper court fee has been paid by the plaintiff on the plaint?*

6) *What is the effect of dismissal of the suit titled Harpal*

Kaur Vs. Krishan Chand suit no.600 of 27.10.98/6.4.2004 decided on 31.10.2005 by confronting the appeal by the court of Addl.District Judge on 5.10.2007?

7) *Whether Harpal Kaur has any salable interest in the suit property to what effect?*

8) *What is the effect of sale deeds executed by defendants no.2 and 3 in favour of defendant no.1 in view of the above said litigation.”*

Petitioner-plaintiffs instituted the suit claiming declaration that they are owners in possession of land measuring 10 marlas 4 sarsahis out of the land measuring 14 kanals 10 marlas on the premise that the suit property was purchased by Krishan Chand vide registered sale deed dated 18.04.1983 from Dhano Devi wife of Paras Ram through her attorney Avinash son of Om Parkash, which was partly owned by Avinash. Krishan Chand was, at the relevant time, posted in the P&T Department and before purchase, had duly obtained permission from the department.

Defendant No.1 Harpal Kaur filed a suit against Krishan Chand bearing No.RT-600 dated 27.10.1998 which was erroneously decided on 31.10.2005. In the aforementioned suit, Harpal Kaur through her husband had challenged the sale deed dated 18.04.1983 executed by Krishan Chand to be void and illegal. The said suit was decided against Harpal Kaur and Krishan Chand was declared to be owner in possession of the suit property. Harpal Kaur as legal heir of her husband Jaswant Singh, who had died, preferred an appeal which was also dismissed on 05.10.2007, but subsequently had extended threat. Krishan Chand had settled in Nawanshahar, therefore, he was not interested in retaining the plot in question and transferred the same for consideration to Banke Bihari son of Amir Chand and this fact was reflected in the revenue record, i.e.,

jamabandi for the year 2001-02. Banke Bihari retained the property in question and transferred the same through registered sale deed dated 16.10.2007 in favour of the plaintiffs. Knowing fully well that Savittar Kaur and Bahadur Singh (defendant Nos.2 and 3) have no saleable interest in the property had connived with them. In these circumstances, the suit was filed.

Defendant No.1 contested the suit and filed written statement. He did not take any preliminary objection, whereas defendant Nos.2 and 3 filed separate written statement and raised the preliminary objections of court fees, impleadment of necessary parties and additional plea was also taken.

The trial Court on the basis of the pleadings of the parties, framed the following issues:-

- “1) Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
- 2) Whether the sale deed dated 16/5/2011 executed by defendant No.2 and 3 in the favour of defendant No.1 qua the suit property is illegal, null and void? OPP*
- 3) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4) Whether the plaintiff has not come to the court with clean hands? OPD*
- 5) Whether the suit of the plaintiff is bad for non-joinder of the necessary parties? OPD*
- 6) Relief.”*

Mr. Parampreet Singh Paul, learned counsel appearing on behalf of the petitioners submitted that the aforementioned issues would be

necessary and essential for the adjudication of the lis between the parties as tomorrow the plaintiffs may not move application and delay the adjudication of the suit. The previous decree cannot be said to be *res judicata* in the absence of the stand in defence.

Mr. H.K.Brinda, learned counsel appearing on behalf of respondent Nos. 1 and 3 supported the impugned order and stated that the issues were framed in 2013 and the application was submitted on 22.03.2018 belatedly, though the suit was slated for plaintiff's evidence and, thus, urged this court for dismissal of the revision petition.

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

On perusal of the issues already framed and sought to be framed, I am of the view that no such additional issue is required to be framed as for most of the issues sought to be framed, onus is on the defendants. The apprehension of the petitioner-plaintiffs is farfetched. There would have been force had the application been filed immediately after framing of the issues. Explanation of five years had gone un-explained. It is settled law that the defendants had a right to lead evidence and on the basis of the same, the matter can be decided. No explanation has come forth in not leading evidence after framing of the issues. All these factors have been taken into consideration by the trial Court for rejecting the application. The order, thus, cannot be said to be suffering from illegality or perversity. Resultantly, the revision petition is dismissed.

January 25, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No