

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CR No.6423 of 2015 (O&M)

Date of decision:1.4.2019

Ram Kumar and another

... Petitioners

versus

Hari Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.S.C.Chhabra, Advocate,
for the petitioners
Mr.H.R.Bhardwaj, Advocate,
for respondents no.1, 5, 7 and 9 to 12
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioners challenge the order of the learned trial Court (Additional Civil Judge, Senior Division, Mansa), dated 21.7.2015, by which, firstly, an application filed by respondent no.1 (plaintiff) under Order 1 Rule 10 of the CPC has been allowed, thereby impleading the sisters of the parties (daughters of defendant no.3, Babu Ram, now deceased), which part of the order Mr.Chhabra submits that the petitioners no longer wish to challenge.

Consequently, the challenge to that part of the order is dismissed as withdrawn.

However, as regards the other part of the order, by which an application filed by respondent no.1-plaintiff under Order 6 Rule 17 of the CPC, has been allowed, that remains the bone of contention, such application having been filed at a stage when the suit was actually remanded by the appellate Court to the trial Court, a judgment and decree earlier

having been passed in favour of respondent no.1-plaintiff.

That order of the learned appellate Court is dated 7.2.2013, the operative part of which reads as follows:-

The judgment and decree under appeal, are set aside. The suit is remanded to the trial Court for decision afresh after recasting the issues as per the pleadings of the parties and giving opportunity to the parties to lead their respective evidence, if so desired. Matter would be decided afresh after taking into consideration the evidence already on record and any fresh evidence, if led. Since the matter is already quite old, the learned trial Court is directed to decide the case as expeditiously as possible, preferably within six months from the date of appearance of the parties before it.”

Thus, the suit itself was ordered to be decided afresh after recasting issues, with the parties to lead their evidence, naturally, thereafter.

Admittedly, that order was never challenged by either party.

The application which has now been allowed (copy Annexure P-4), is seen to have been filed before the learned trial Court on 3.4.2013, i.e. about two months after the order passed by the learned Additional District Judge.

It is to be noticed here that the amendment sought by respondent no.1-plaintiff (in his plaint), is to the effect that the gift deeds by which Babu Ram (naturally during his life time) gifted a part of the suit property to the petitioners herein (defendants no.5 and 7 in the suit), could not have been so gifted, in view of the fact that the property is actually

ancestral, coparcenary property.

2. Mr.Chhabra, learned counsel for petitioners, submits before this Court that the suit having been instituted on 14.8.2001, the application moved in the year 2013, i.e. 12 years later, upon remand of the case from the appellate Court, is highly belated and therefore not sustainable in terms of the proviso to Rule 17 of Order 6 of the CPC, and therefore the impugned order deserves to be quashed on that ground alone.

3. Mr.Bhardwaj, learned counsel for respondents no.1,5, 7 and 9 to 12, on the other hand submits that vide the order of the learned Additional District Judge dated 7.2.2013, the trial having been ordered to recommence, with even issues to be recast, and consequently fresh evidence to be led, the trial cannot be stated to have commenced, and consequently the proviso to the aforesaid provision would not come in the way of the respondent-plaintiff.

4. Having considered the matter, though Mr.Chhabra is absolutely correct that with the plea of the property (allegedly) being ancestral coparcenary property always having been available to the plaintiff at the time when the suit was originally instituted in the year 2001, and therefore 12 years later he should not be permitted to take that plea, as it would not be a plea which was taken for the first time despite due diligence having been earlier exercised, I would simply, even on 'technical' grounds, not be able to disagree with learned counsel for the respondents, because once the order remanding the suit to the trial Court remained unchallenged and the trial was to actually recommence *de novo*, the application filed under Order 6 Rule 17 CPC cannot be stated to be one that has been filed after

commencement of the trial, so as to make the bar contained in the said rule operative.

5. Obviously, practically speaking, it is a 'technical situation' in favour of the respondent-plaintiff, but one which in my opinion, the petitioners-defendants cannot avoid.

However, respondent no.1-plaintiff having taken that plea 12 years after the suit was actually instituted, in the opinion of this Court, the costs of Rs.2,000/- awarded to the petitioners by the trial Court, while allowing the application of respondent no.1-plaintiff, is too paltry a sum and therefore, to repeat, with the plea always having been available to the plaintiff even at the time when he originally filed the suit in the year 2001, it is considered appropriate that while dismissing this petition, the costs imposed by the trial Court be enhanced to Rs.20,000/-, which would be paid by respondent no.1-plaintiff as a pre-condition to his application for amendment being allowed. Naturally therefore, if the costs are not paid, this petition will in fact be treated to have been allowed and the application filed under Order 6 Rule 17 of the CPC dismissed.

The aforesaid costs would be paid to petitioner no.2 only, namely, Janak Raj, petitioner no.1, Ram Kumar, already having withdrawn from this petition, as recorded in the order passed by this Court on 7.9.2018.

1.4.2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No