

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

103

CR No.7199 of 2015

Date of decision:15.2.2019

Kulwinder Kaur

... Petitioners

versus

Dalbir Singh and others

... Respondents

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

Present: Mr.Sarju Puri, Advocate,
for the petitioner
None for the respondents

...

AMOL RATTAN SINGH, J. (Oral)

1. As already noticed in the order dated 8.2.2018, by this petition, the petitioner has impugned the order of the trial Court (Civil Judge, Senior Division, Shaheed Bhagat Singh Nagar), dated 26.8.2015, by which her application seeking issuance of interrogatories to the Special *Kanungo*, Nawanshahar, to trace out the history of the suit property, has been dismissed.

2. Notice having been issued in this petition on 31.10.2015, thereafter respondent no.1 first put in appearance through counsel on 16.5.2016, after which the matter kept on getting adjourned either for non-appearance of counsel for the parties or on account of adjournments sought, with counsel for respondent no.1 having last put in an appearance on 19.11.2018, before which date he had argued that, as has rightly been held by the trial Court, it is the duty of the plaintiff herself to prove that the suit

property is a co-parcenary property and as such, no excerpts/interrogatories can be sought as a matter of right by the petitioner.

On that date, this Court had observed on the aforesaid argument that though counsel for the aforesaid respondent may, in the *prima facie* opinion of this Court, be correct, there would still be no bar on the Court directing a particular witness to produce official record that a party was not able to obtain, if such record went to the core of the dispute between the parties.

On the last date of hearing, learned counsel for respondent no.1 had not come present but Mr.Puri, learned counsel for the petitioner, had made submissions which had been noticed in detail and consequently the relevant part of the order dated 8.2.2019 is being reproduced as follows:-

“Mr. Puri, learned counsel for the petitioner, today again points to the fact that in the impugned order itself, at the outset, it has been observed that counsel for defendant no. 1 (present respondent no. 1) had stated that he had no objection if the application was allowed, with the remaining defendants having been proceeded against *ex parte* in any case.

Despite that, the trial Court dismissed the application, holding first that the plaintiff needed to establish the nature of the suit property to show that it was co-parcenary property through excerpts, for the production of which a direction from the Court was not needed; second, the issuance of interrogatories would not advance the cause of the plaintiff as the “joint nature of the suit property” could not be established

by such interrogatories; and last, because a similar application had already been dismissed by that Court on 05.02.2014.

Pursuant to notice having been issued in this petition, learned counsel for respondent no. 1 had, as recorded in the order dated 22.10.2018, reiterated the reasoning given by the trial Court, essentially to the effect that it was the duty of the plaintiff herself to prove that the property was coparcenary in nature.

Today, Mr. Puri further refers to Chapter IX of Volume I of the Rules and Orders of this Court, wherein the procedure for obtaining excerpts is given, with Clause 1 thereof reading as follows:-

*“**Procedure for obtaining excerpts.** For the purpose of making the information contained in the revenue records accessible to the litigating public and to the Courts, a special 'Kanungo' or 'Patwari Moharrir' has been appointed in all the districts of the Punjab, except Simla. The procedure to be followed in such cases is that the Court in which the suit is pending issues a summons to the special 'Kanungo' or 'Patwari Muharrir', who after preparing his excerpt, goes to the Court on the date fixed, taking with him the revenue records from which the excerpt has been complied. He is then placed in the witness box. Counsel thus have the opportunity of comparing the excerpt with the originals and of examining him on any*

points they choose.”

Sub-clause (i) of Clause 5 thereafter reads as follows:-

“5. The following instructions have been issued for the guidance of the Courts and of the Special 'Kanungo' or 'Patwari Muharrir' and it will be the immediate duty of the officer-in-charge to see that these instructions are followed:-

Instructions regarding the utilization of the Services of the Special 'Kanungo' or 'Patwari Muharrir'.

*(i) **Application should be made to Court.** Applications for the service of the Special 'Kanungo' or 'Patwari Muharrir' must be made to the Court and may not be made direct to the Special 'Kanungo' or 'Patwari Muharrir'.”*

Thus, the contention is that the only method of obtaining such excerpts being by the process of Court alone and not by any direct application to the revenue official concerned, the petitioner had no choice but to move the said application seeking a direction to the revenue official to provide the excerpts showing the genealogical table and sequence of devolution of the suit property, for the past few generations.

Counsel for respondent no. 1 not being present, adjourned for the last time to 13.02.2019.

To be shown in the urgent motion list.”

Today again, despite the petition having been listed in the urgent list, counsel for respondent no.1 is not present.

3. Very obviously, he has no answer to the arguments raised by Mr.Puri, learned counsel for the petitioner.

Mr.Puri further again pointed out that as a matter of fact, though this petition is being contested by respondent no.1, even a perusal of the impugned order shows that before the trial Court, the respondents (defendants before the trial Court) had not opposed the application of the petitioner, seeking issuance of interrogatories to the Special *Kanungo* to submit an excerpt as regards the history of the suit land.

Other than that fact, in any case, the Rules and Orders of this Court as reproduced herein above, specifically stipulating that any such application for the service of the Special *Kanungo* or *Patwari Moharrir*, for preparing excerpts, has to be moved only through a court of law, naturally the petitioner had no other choice but to do so and therefore, the trial Court has wholly erred in dismissing the application vide the impugned order.

4. Consequently, this petition is allowed with the impugned order set aside and the application of the petitioner, before the trial Court, seeking issuance of interrogatories to the Special *Kanungo* to prepare an excerpt with regard to the history of ownership of the suit land and the genealogical table to show any connection/'non-connection' of the petitioner thereto, is allowed.

15.2.2019
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No