

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 605 of 2019

Date of Decision: 30.01.2019

Jagdish Singh and anotherPetitioners

Versus

Amarjit Kaur @ Nirmal Kaur and othersRespondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Satbir Rathore, Advocate
for the petitioners.

AVNEESH JHINGAN, J.(oral)

The present civil revision petition has been filed being aggrieved of the order dated 10.12.2018 passed by Civil Judge, (Junior Division), Dasuya (hereinafter referred to as 'the Trial Court') dismissing the application under Order 14 Rules 2 and 5 read with Section 151 of the Code of Civil Procedure, 1908, (for short 'CPC') for framing of additional issues.

The facts in brief are that the respondents/plaintiffs (for short 'respondent') filed a suit for declaration to the effect that respondents are joint owners of the land in dispute and that land in dispute was an ancestral and joint Hindu Coparcenary property and the transfer deed dated 29.12.2008 executed by petitioners/defendants No. 1 and 2 (for short 'petitioner') in favour of defendant No.3 is null and void and not binding on the rights of the plaintiffs qua their share.

On notice written statement was filed. Issues were framed. The petitioners-defendants moved an application for framing of additional issue that "Whether the land in dispute in the hands of Jagdish Singh, father of plaintiff is ancestral & joint Hindu coparcenary land as alleged in para no.1 of the plaint?OPP" The said application was dismissed. Hence, the present

Learned counsel for the petitioners states that before getting a relief of declaration the plaintiffs will have to prove that the property in dispute was ancestral and joint Hindu Coparcenary property.

The contention raised by learned counsel for the petitioners has already been addressed by the trial Court while dismissing the application. A specific issue has been framed "whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP".

The learned lower Court while dismissing the application has held as under:

" Onus to prove issue No.1 has been laid upon plaintiffs. Whether the suit land was ancestral joint Hindu land has to be proved by the plaintiffs for discharging the onus of proving issue no.1. There is no need to frame issue that "Whether the land in dispute in the hands of Jagdish Singh, father of plaintiff is ancestral and joint Hindu Co-parcenery land as alleged in para 1 of the plaint? OPP". Issues have been rightly framed."

It is not that for each and every argument, an issue is to be framed. It has been rightly stated that for deciding issue No.1, the plaintiffs will have to prove that the land in suit is joint Hindu Coparcenary Property.

In such circumstances, no interference is called for in the impugned order.

The civil revision petition is dismissed.

30.01.2019
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(AVNEESH JHINGAN)
JUDGE