

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

**SAO No. 42 of 2017 (O&M)
Date of Decision: May 16, 2019**

Jagdish Kaur

.....APPELLANT

VERSUS

Sukhminder Singh and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Tushar Sharma, Advocate
for the appellant.

Mr. Gagandeep, Advocate
for respondent Nos.1 and 2.

Mr. Ishan Gupta, Advocate
for respondent Nos.3 to 5.

SURINDER GUPTA, J.(Oral)

Heard.

Plaintiff Jagdish Kaur filed suit seeking the relief as follows:-

A) Suit for joint possession to the effect that the plaintiff is owner in joint possession of 1/6th share of the land measuring 5 Kanal 17 Marlas out of which Late Harchand Singh father and Late Gurnam Kaur mother of the plaintiff and defendants had a share to the tune of 25/54 comprising in khata No.86/236 and Khasra No.163//22 min, 5 Kanal 17 Marlas situated in the revenue estate of Uppli Road, Sangrur vide Jamabandi for the year 2004-2005 and a property measuring about

130 Sq.yards bearing H.No.6163 Mohalla Mehna, Bathinda whose map is attached.

B) Suit for permanent prohibitory injunction restraining the defendants to alienate the land situated at Uppli Road, Sangrur and G.No.6163 situated at Mohalla Mehna, Bathinda in which the plaintiff has 1/6th share as both father and mother of the plaintiff and defendants had expired, to any other person and the defendants may also be restrained from raising any type of construction temporary or permanent on the joint land in order to change the shape/nature/value of the property in order to exercise their right/possession over the more caluer piece of joint land in order to cause loss to the plain without getting partition and without due course of law.

Defendants No.1 and 3 to 5 in their joint written statement contested the claim of plaintiff alleging a family settlement dated 25.12.1980, as per which, the suit property had fallen to their share. They also alleged Will of Harchand Singh dated 12.12.2004 in their favour and to support their plea that the plaintiff has no share in the suit property. Defendant No.2 in his separate written statement also placed reliance on the Will and alleged that the plaintiff was disowned by Harchand Singh from his movable and immovable property during his life time vide notice dated 19.09.2007 published in newspaper 'Punjab Kesri.'

From the pleadings of parties, the issues were framed as follows:-

- 1. Whether the plaintiff is entitled to the relief of joint possession as prayed for ?OPP*

2. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP*
3. *Whether the plaintiff has no cause of action to file the present suit ? OPD*
4. *Whether the suit is not properly valued for the purpose of Court fee ? OPD*
5. *Whether the plaintiff is estopped by her own act and conduct from filing the present suit ? OPD*
6. *Whether the plaintiff has no locus standi to file the present suit ? OPD*
7. *Whether the suit is not maintainable in the present form ? OPD*
8. *Relief.*

The suit of the plaintiff was dismissed vide order dated 24.03.2014 for want of prosecution but that order was set aside vide order dated 16.07.2014 passed by the Additional District Judge, Sangrur and trial Court was directed to decide the case afresh. While disposing of the suit vide judgment dated 30.04.2015, learned Civil Judge (Senior Division), Sangrur recorded the findings on issues No.1 to 3, 6 and 7 in favour of the plaintiff while issues No.4 and 5, the onus to prove which was on defendants were not pressed by learned counsel for the defendants. While recording the findings on issues No.1 and 2, learned Civil Judge (Senior Division), Sangrur also took note of the plea raised by the defendants about the family settlement writing dated 25.12.1980 and the will dated 12.12.2004 and observed that both these documents were not duly proved on record.

In appeal, it was contended before learned District Judge,

Sangrur that the learned trial Court has failed to frame proper issues. Accepting their contentions additional issues were framed by the learned District Judge, Sangrur and the case was remanded to the trial Court to record evidence on the additional issues and decide the case afresh. Additional issues framed by lower Appellate Court are as follows:

7-A Whether the defendants became owners in possession of the property measuring 5 Kanal 17 Marlas situated at Uppli Road, Sangrur on the basis of family settlement dated 25.12.1980? OPD.

7-B Whether Harchand Singh executed valid Will dated 12.12.2004 registered on 29.12.2004 regarding the property left behind by him? OPD.

7-C Whether Harchand Singh dis-inherited the plaintiff from his estate by making publication in the newspaper Punjab Kesari published on 19.09.2007, if so its effect? OPD-2

8. Relief.

Learned counsel for the appellant has argued that while framing additional issues, learned District Judge, Sangrur has not looked into the fact that the findings with regard to the plea of family settlement dated 25.12.1980 and Will dated 12.12.2004 had already been recorded by the learned trial Court. The parties were well aware of the dispute and had led evidence. Both these documents were produced on file as Mark-C & D and were discarded by the learned Civil Judge (Senior Division), Sangrur. The Ist Appellate Court could reappraise the evidence produced on record and record its findings with regard to these documents.

Issue No.7(c) framed by the learned trial Court is not a

relevant issue as the findings with regard to other facts as alleged by the defendants had already been recorded and there is no provision to disinherit legal heirs by publishing a notice in a newspaper. Order of lower Appellate Court framing this issue is set aside.

Learned counsel for the respondent has argued that issues No.7(a) to 7(c) are relevant issues, which arise from the pleadings of the defendants. Defendants could not lead evidence on these issues as these were not specifically framed by the learned trial Court.

On perusal of the judgment passed by the trial Court and the Ist Appellate Court, I am of the considered opinion that issues No.7(a) and 7(b) only are relevant issues which call for specific findings while deciding the claim of the parties. The question which arises for consideration is as to whether framing of additional issues could be a reason for remanding the case and setting aside the judgment of the trial Court. Learned counsel for the respondent has referred to the provision of Order 41 Rule 25 CPC, which reads as follows:

“25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor [within such time as may be fixed by the Appellate Court or extended by it from time to time]”

As is evident from the above provision, the Ist Appellate Court on framing of additional issues may refer the case for trial to the lower Court on additional issues and to record evidence and then return the file to the Appellate Court with its report on finding of these issues. On receipt of findings of the trial Court on these issues, the Appellate Court is required to proceed further with the appeal and to decide the same on merits. Instead of adopting the procedure as prescribed under Order 41 Rule 25 CPC, learned District Judge, Sangrur adopted a shortcut method to dispose of the appeal by remanding the case for fresh decision. The order passed by the Appellate Court is perverse and not legally sustainable. This appeal has merits and is accepted.

Parties are directed to appear before the District Judge, Sangrur on 31.05.2019, on which date, the appeal will be taken on Board and proceeded further as per provisions of Order 41 Rule 25 CPC.

May 16, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No