
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

121

Civil Revision No.1202 of 2020

Date of decision : 18.02.2020.

Amarjit Singh and another

... Petitioners

Versus

Gurinderbir Singh and others

.. Respondents

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Puneet Sharma, Advocate for the petitioners.

Anupinder Singh Grewal, J. (Oral)

The petitioners/defendants have challenged the order of the trial Court dated 07.02.2020 whereby the application preferred by respondent No.1/plaintiff for framing the additional issues has been allowed.

Learned counsel for the petitioners/defendants contends that the application had been preferred at the fag end of the trial and was meant to fill up the lacuna and therefore, it should have been declined. He has relied upon the judgments of this Court in the cases of *Surinder Singh versus Kuldeep Singh and others, 2015(8) RCR (Civil)107* and *Paramjit Kaur versus Surinder Singh, 2011(7) RCR (Civil) 563*.

Heard.

The respondent No.1/plaintiff had filed a suit for declaration to the effect that he is a co-sharer, co-owner and in joint possession to the extent of his share of the property of Swaran Kaur w/o Late Nikka Singh and further declaration to the effect that the alleged Will dated 01.08.2001 executed by

Swaran Kaur in favour of the defendants, being wrong, illegal, null and void, is liable to be set aside. Declaration had also been sought to the effect that the mutation No.23561 dated 09.11.2009 related to the suit property is illegal, null and void. The trial Court, through the impugned order, has framed issues with regard to the declaration which the plaintiff/respondent No.1 had sought as it was clearly mentioned in the title of the suit as well as in the prayer clause of the plaint itself that a suit for aforementioned declarations had been sought for but an issue in this regard had not been framed. The trial Court, while allowing the application, has also recorded the submissions of the counsel for the parties that they have already led evidence in support of the newly framed issues but it has granted them one opportunity each to lead evidence, if any, on the newly framed issues.

The judgments cited by the counsel for the petitioners are distinguishable on the facts of the instant case. In the case of ***Surinder Singh versus Kuldeep Singh and others(supra)***, the matter had arisen out of a suit for possession by way of specific performance of an agreement to sell and the plea taken by the defendants therein was that agreement to sell was a forged and fabricated document. The trial Court had declined the application as on the date of framing the issues therein, no other issue had been pressed.

In the case of ***Paramjit Kaur versus Surinder Singh (supra)***, the plaintiff therein had filed a suit for permanent injunction restraining the defendants from interfering in peaceful possession and alienating the suit land. The defendants therein had taken a specific plea that Will pertaining to the suit land had been executed by the then owner in favour of the respondent therein and the issue with regard to the validity of the Will had not been formulated

earlier.

In the instant case, the plaintiff/respondent No.1 has specifically sought a declaration with regard to the Will being a forged and fabricated document and had also sought setting aside of the mutation effected in consequence thereto.

The order passed by the trial Court appears to be just and reasonable in the facts and circumstances of the case. There appears to be omission with regard to framing of an issue with regard to declaration which will go to the root of the matter in the instant case. It is well settled that the rules of procedure are meant to advance the cause of justice and not to thwart it. The trial Court has already taken into account the delay in the case and granted only one opportunity to both the parties to lead their evidence, if any, in terms of the issues which have been framed.

Consequently, I do not find any manifest illegality in the impugned order which would warrant interference while exercising revisional jurisdiction. The petition stands dismissed.

At this stage, learned counsel for the petitioners contends that it would be in the interest of justice that the petitioners be granted adequate opportunity to lead their evidence in terms of the newly framed issues, therefore, the finding with regard to grant of only one opportunity to the parties be modified.

The request of learned counsel for the petitioners appears to be reasonable as it seems that the direction to grant only one opportunity to lead evidence has been granted in view of the apprehension expressed by the counsel for the petitioners before the trial Court that the application was meant

to further delay the proceedings.

In view of the limited prayer of learned counsel for the petitioner, I intend to modify the order of the trial Court without issuing notice to the respondents, to the extent that in the eventuality of any of the parties seeking another opportunity to lead evidence to the newly framed issues, the same shall be granted to either of them.

The petition stands disposed of accordingly.

If the respondents are aggrieved by the order of this Court, they would be at liberty to approach this Court by way of filing an appropriate application.

(ANUPINDER SINGH GREWAL)
JUDGE

February 18, 2020
sonia gugnani

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes/No