

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

**CR No. 5223 of 2019 (O&M)
Date of Decision: 12.02.2020**

Parveen Kumar

....Petitioner

Versus

Prem Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry K.Singla, Advocate
for the petitioner.

Mr. Nikunj Dhawan, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendant No. 1 has filed the present revision petition challenging the correctness of order dated 29.07.2019 passed by Ld. Civil Judge (Jr. Division), Samana permitting the plaintiff to lead his evidence.

Some facts are required to be noticed. The plaintiffs who are successor-in-interest of Late Sh. Jethu Ram Singla, filed the present suit for declaration, caption whereof reads as under:-

“Suit for declaration to the effect that the sale deed bearing vasika no. 1994 dated 15.03.1993 executed by defendant no. 2 in favour of defendant no. 3 in respect of house marked as ABCD on the ground floor and EFGH on the first floor shown in the site plan annexed with the plaint situated at Das Ghara Mohalla, Samana Tehsil Samana and District Patiala and subsequent sale deed bearing wasika no. 2450 dated 28.12.1994 executed by defendant no. 3 in favour of defendant no. 1 in respect of above said property are illegal, null, void, arbitrary, ultra virus and result of fraud played

by defendant no. 2 in connivance with defendant no. 3 and 1 interse and the said sale deeds are liable to be set aside qua the rights of the plaintiffs and for further declaration that the plaintiff no. 1 is entitled to 1/3rd share and plaintiff no. 2 to 5 are entitled to 1/3rd share jointly in the suit property on the basis of registered will executed by Sh. Jethu Ram Singla father of the plaintiff no. 1 and defendant no. 2 and father in law of plaintiff no. 5 and grand father of plaintiff no. 2 to 4 registered with the office of Sub Registrar Samana vide wasika no. 7 dated 15.04.1977 and for possession of the share of the plaintiffs.”

In the aforesaid suit, petitioner Parveen Kumar was defendant No. 1 whereas Raj Kumar son of Late Sh. Jethu Ram was defendant No. 2 and Johri Lal son of Sadhu Ram was defendant No. 3. Defendant No. 2 was proceeded against ex parte. Defendant No. 2 Raj Kumar son of Late Sh. Jethu Ram had executed a sale deed dated 15.03.1993 in favour of defendant No. 3 Johri Lal. The plaintiff had sought declaration that such sale deed as also subsequent sale deed dated 28.12.1994 executed by defendant No. 3 in favour of defendant No. 1, are illegal, null and void.

As noticed above, defendant No. 2 did not choose to contest the suit. After framing of the issues, the plaintiff concluded his evidence. He filed an application for permission to lead additional evidence, which has also been withdrawn.

The defendant No. 2 filed an application for setting aside ex-parte proceedings which was allowed by the Court on 01.11.2018. The defendant No. 2 filed a written statement practically admitting the case of the plaintiff. He rather pleaded that defendant No. 3 had played fraud with him (defendant No. 2). Thus, defendant No. 2 had not contested the suit filed by the plaintiff. In other words, he was rather supporting the plaintiff.

After the written statement was filed, the Court has permitted the plaintiff to lead evidence once again. Learned counsel for defendant No. 1 submits that once defendant No. 2 has not contested the suit of the plaintiff and has admitted the claim of the plaintiff, therefore, the evidence which has already been led, should be read and the plaintiff should not be allowed to lead further evidence. On the other hand, learned counsel for the respondent-plaintiff has submitted that once defendant No. 2 through his legal representatives, has filed a written statement, therefore, plaintiffs have every right to lead evidence.

This Court has considered submission of learned counsel for the parties and with their able assistance, gone through the documents filed. No doubt, the ex parte proceedings against defendant No. 2 have been set aside by order dated 01.11.2018. However, once, defendant No. 2 has filed a written statement admitting the case of the plaintiff or in other words, supported the case of the plaintiff, hence, neither any fresh issue was required to be framed nor there was any occasion to permit the plaintiff to lead fresh evidence. In fact, defendant No. 2 has chosen to step in, in order to help his brother i.e. the plaintiff.

In view thereof, order dated 29.07.2019 passed by Ld. Civil Judge (Jr. Division), Samana, is set aside. Learned trial Court is requested to proceed with the case.

Petition allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

(ANIL KSHETARPAL)
JUDGE

12.02.2020
Maninder

Whether speaking/reasoned : Yes
Whether reportable : No