

Sr. No. 120

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

CR-2312-2021

Date of decision: 11.10.2021

Rajesh Saini

...Petitioner

Versus

Harish Saini and others

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside an order dated 02.09.2021 passed by learned Civil Judge (Junior Division), Panipat whereby an application filed by the petitioner/plaintiff for framing of an additional issue was rejected.

2. Following issues were framed vide an order dated 09.10.2015 passed by trial court:-

“1. *Whether the plaintiff is entitled to the relief of separate possession by way of partition as mentioned in the head note of the plaint? OPP.*

2. *Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendants forever from interfering in the peaceful possession of the plaintiff or to changing the nature of the suit property or creating any third party rights over the same in any manner? OPP*

3. *Whether the suit of the plaintiff is not maintainable? OPD*

4. *Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD*

5. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*

6. *Relief.”*

3. Their sufficiency was never challenged until after evidence was led and closed.

4. Once the evidence of respondents/ defendants was closed on 28.02.2020, an application dated 16.03.2021 was filed seeking framing of following additional issue :-

“i. Whether the will bearing Vasika No.470/3 registered with Sub-Registrar, Panipat on 14/02/2006 by Smt. Ram Dei Widow of Sh. Om Parkash is free from undue influence and has been actually got registered by Smt. Ram Dei when she was in full senses and as such is not liable to be set-aside. OPD”

5. Perusal of the impugned order herein passed by the trial Court reflects that the application seeking framing of additional issues has been primarily dismissed on the ground that issue has already been decided qua validity and declaration of Will and, therefore, application seeking to frame additional issue on the ground that the Will has been executed free from undue influence is misconceived. Relevant of the reasoning recorded by the trial court is as below:-

“6. Perusal of case file shows that vide order dated 08.08.2019 passed by the undersigned, Civil Suit No.284/2015 wherein plaintiff has basically sought a relief of declaration to the fact that aforesaid Will dated 14.02.2006 alleged to be executed by Ram Dei in favour of defendant No.1 is illegal, null and void and not binding on the rights of plaintiff along with the consequential relief of permanent injunction, has already been consolidated with the other/ present case bearing CS No.917/2015. The aforesaid case bearing CS No.284/2015 was at the stage of rebuttal evidence, if any and arguments when the said Civil Suit was consolidated with the present Civil Suit bearing No.917/2015 wherein plaintiff has sought the relief of separate possession by way of partition by challenging the aforesaid impugned Will dated 14.02.2006 as illegal, null and void and not binding on his rights along with consequential relief of permanent injunction. Perusal of case file further shows that issues in the said case bearing No.CS/284/2015 were framed by Ld. Predecessor Court vide order dated 09.10.2015 and the issue No.1 was framed as under: -

1. “Whether the plaintiff is entitled to a decree for declaration as prayed for? OPP”

and the plaintiff/ applicant has already led his oral as well as documentary evidence by tendering his duly shown affidavit Ex.PW1/A and the perusal of its Paragraphs No.5 and 6 clearly transpires that when he has already led his evidence in order to challenge the legality and the validity of

aforesaid impugned Will dated 14.02.2006 corresponding to his pleadings, then this Court fails to understand when both the afore-stated Civil Suits have already been consolidated by the Court and the plaintiff/ applicant has already led his entire evidence in the said Civil Suit bearing No.284/2015 then for what reason he has prayed for again framing the afore-mentioned issued. It hardly makes any difference if the Ld. Predecessor Court vide its order dated 17.03.2019 in Civil Suit bearing No.917/2015 inadvertently did not frame any issue as sought by the plaintiff/ applicant through this application in hand as the said issue has already been framed by the Ld. Predecessor Court in the aforesaid case bearing No.284/2015 and both the parties have already led their respective evidences corresponding to their contentions. So, in such a scenario when both the parties are well aware of their pleadings and the respective rival contentions and have accordingly led their evidences to corroborate their contentions, then there arises no need to frame again the afore-mentioned issue which has already been framed and dealt upon by both the parties in the afore-stated Civil Suit bearing No.284/2015. Accordingly, finding no any merit in the application in hand, the same stands dismissed.”

6. Having appraised the order under challenge, I am in agreement with the reasons recorded by the trial Court. It is expected of the trial Court to give finding on the issue of declaration only after giving reasons thereof as well as discussing evidence adduced by the respective parties. It has already been noted that parties have led their respective evidence and at this stage application for framing additional issue ought not to be entertained.

7. On a Court query, learned counsel for the petitioner submits that if the additional issue is framed under the orders of this Court, he undertakes (under instructions of his client) that he will not adduce any additional evidence.

8. Being so, all the more reason no such additional issue is required to be framed. As already observed, based on evidence already on record, it is but natural that the trial Court shall discuss the reasons of giving its finding on validity of the Will and/or otherwise, as the case may be.

9. That apart, I am also of the view that once the entire evidence has been adduced and the matter is ripe for arguments, there is no ground, at this

stage to entertain the revision petition as the application is highly belated and even otherwise the trial Court order ought not to interfered on merits as well.

10. Dismissed.

11.10.2021
vandana/mahavir

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No