

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1583-2017

DATE OF DECISION: OCTOBER 12, 2022

NIRANJAN KAUR & OTHERS

...PETITIONERS

VERSUS

RANO @ RANI SAINI & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. NITISH GARG, ADVOCATE FOR THE PETITIONERS.

MR. ABHINAV GUPTA, ADVOCATE FOR RESPONDENT NO.1.

MANOJ BAJAJ, J.(ORAL)

The petitioners have filed this revision petition challenging the order dated 23.1.2017 (Annexure P-3), whereby the application filed by petitioner-defendant under Section 151 CPC dated 19.9.2016, seeking permission to tender mutation order dated 10.2.1981 and to examine Sat Parkash Mittal, Notary Public, Saharanpur, by way of additional evidence was treated as deemed to be partly allowed on 20.9.2016.

Learned counsel for the petitioner has stated that the petitioner No.1, namely, Niranjana Kaur has expired during the pendency of the revision petition and the L.R.s are already on record as petitioners No.2 to 8. He prays for exemption from formally impleading the L.R.s of petitioner No.1.

The prayer is not opposed by Mr. Abhinav Gupta, learned counsel for the respondent No.1.

Ordered accordingly.

Learned counsel for the petitioner has argued that on 19.9.2016,

the defendants had filed an application seeking permission to tender the mutation order dated 10.2.1981 relating to Mutation No.2616 and also to examine Sat Parkash Mittal, Notary Public, Saharanpur, by way of additional evidence. He submits that inadvertently, this was not done previously when the evidence of the defendants was closed. He submits that the application was contested by the plaintiff who filed reply to the said application on 20.9.2016, and pleaded that the documents sought to be produced are already on record. Further, the prayer for leading additional evidence was also opposed. He submits that by omission, no formal order was passed on this application, but subsequently, vide impugned order dated 23.9.2017, the trial Court removed this defect by observing that the application is deemed to be partly allowed on 20.9.2016, only for the purpose of summoning the mutation file. According to him, the order is non-speaking, without reasons and therefore, is not sustainable.

Learned counsel for respondent No.1 does not dispute this fact that on the application filed by the defendants on 19.9.2016, no order is available on the case file. Mr. Gupta, learned counsel for respondent No.1 has argued that the evidence of the defendants was closed on 24.5.2016, therefore, the prayer cannot be allowed.

After hearing the learned counsel for the parties and considering the above background, this Court finds that admittedly, the application as well as the reply are on record, but the decision on the said application is not on the case file, therefore, it would be in the interest of justice, if the aforesaid application is decided by passing a speaking order.

Apart from it, the trial Court vide order dated 23.1.2017, has only observed

that the said application is to be treated as partly allowed, which alone would not be enough to construe as decision on the said application, particularly when the reasons for partly dismissing the application are not mentioned.

Thus, the revision petition is allowed and the impugned order dated 23.1.2017 (Annexure P-3) is set aside, and it is directed that the trial Court shall decide the application dated 19.9.2016, by passing a fresh order.

October 12, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No