

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.934 of 2022(O&M)
Date of decision:16.03.2022

Kirti

...Petitioner

Versus

Anup Singh deceased through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.R.Yadav, Advocate, for the petitioner.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The following interesting question arises for consideration:-

“whether the proforma defendant who has supported the case of the plaintiff can be granted an opportunity to lead evidence after the contesting defendant has already concluded his evidence?”

Some facts are required to be noticed.

Smt. Rachna daughter of Sh. Rajinder Kumar (proforma respondent no.2) filed a suit for passing a decree for separate possession by way of partition in two equal shares. The plaintiff and proforma defendants are on one side whereas the contesting defendant-Anup Singh is on the other side.

The petitioner herein was impleaded as proforma defendant no.2. It was claimed that Smt. Rachna, Smt. Kirti (petitioner herein) and Smt. Kailash are joint owners to the extent of half share, whereas, the

remaining half share is owned by Sh. Anoop Singh. The petitioner along with Smt. Kailash filed the written statement admitting the claim of the plaintiff. It is evident from the written statement filed by the proforma defendant no.2 and 3 that the entire claim of the plaintiff including the prayer has been admitted. There is no denial of any assertions made in the plaint by the petitioner and the other proforma defendant.

The plaintiff and contesting defendants have already concluded their evidence. The petitioner filed an application for permission to examine Ajay Patwari, after the closure of the evidence by the contesting defendant, which has been dismissed by the trial court.

The learned counsel representing the petitioner while assailing its correctness, submits that on 10.09.2019, the trial court passed the following order:-

“Fresh power of attorney on behalf of defendant no.2 filed. Learned counsel for plaintiff closed documentary evidence in affirmative after tendering documents Ex.P1 to Ex.P8 vide his separate statement.

Now the case is adjourned to 23.09.2019 for evidence of contesting defendants and proforma defendants at own responsibility. Arguments on stay application be also heard on the date fixed.”

He further submits that all the defendants are required to be given an opportunity to lead evidence even if they admit the case of the plaintiff.

No doubt, Order XVIII CPC does not make any distinction between the contesting defendant or the proforma defendant. However, once the petitioner admits the case of the plaintiff and supports her, then, she

is essentially claiming the same relief as is being claimed by the plaintiff.

In such circumstances, the petitioner should have filed an application before the contesting defendant was permitted to lead evidence. No application in this regard was filed.

Moreover, if the petitioner is permitted to lead evidence at this stage, the contesting defendant would not get an opportunity to lead counter evidence.

The learned trial court has also not erred in observing that the petitioner by getting an opportunity to lead evidence wants to fill up the lacuna in the evidence of the plaintiff.

The next argument of the learned counsel representing the petitioner is that the suit is for partition and therefore, every party to the suit has a right to a particular share, therefore, every party is a plaintiff as well as a defendant. There may be some substance in the argument of the learned counsel, however, in the present case, the petitioner, while filing her written statement along with the other proforma defendant, has not controverted any assertion made in the plaint. Keeping in view the aforesaid facts, it is evident that the observations made by the trial court are correct.

On a court question, the learned counsel representing the petitioner has failed to explain as to how the petitioner is going to suffer any prejudice particularly when she has already admitted the case of the plaintiff in entirety.

In view thereof, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

March 16, 2022

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No