

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

**CR-1376-2022 (O&M)
Reserved on: 10.10.2022
Pronounced on: 14.10.2022**

Darshna Rani

....Petitioner

Vs.

Jagdish Chand and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

**Present: Mr. Sumit Sangwan, Advocate
for the petitioner.**

**Mr. Avnish Mittal, Advocate
for respondent No.1.**

**Mr. Abhinav Oberoi, Advocate
for respondent No.2.**

**Ms. Manik Makkar, Advocate and
Mr. Rakesh Mehta, Advocate
for respondents No.5 & 6.**

**Mr. K.D. Sachdeva, Advocate
for respondent No.7.**

**Mr. Chander Mohan Sharma, Sr. Panel Counsel, Govt. of India
for respondent No.8.**

ARVIND SINGH SANGWAN, J. (Oral)

CM-6754 & 6756-CII-2022

For the reasons stated in the applications, same are allowed. Copy of the order dated 25.04.2022 is taken on record and exemption from filing certified and typed copy thereof is granted.

CMs stand disposed of.

CR-1376-2022

Prayer in this petition is for setting aside the order dated 15.11.2021, vide which the trial Court directed to recast the issues regarding the Will as well as subsequent order dated 25.03.2022, vide which the following issues were framed: -

1. Whether plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the plaintiff is entitled for Permanent Injunction as prayed for? OPP
3. Whether the plaintiff is entitled for Mandatory Injunction as prayed for? OPP
4. **Whether Smt. Krishna Devi, mother of plaintiffs has executed Will dated 15.12.2014 in favour of defendant No.3 namely Darshna Kumari, is valid and operative Will? OPD Onus is upon defendant No.3.**
5. Whether the present suit is not maintainable in the present form? OPD
6. Whether the plaintiff has not come to the court with the clean hands? OPD
7. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
8. Relief.

The trial Court further directed that at the first instance,

petitioner-defendant No.3 Darshna Rani will lead the evidence, as she has set up the Will.

Brief facts of the case are that respondents No.1 & 2-plaintiffs have filed a suit for declaration that they are entitled to 1/5th share of the property, as detailed in the plaint, with a consequential relief of permanent injunction restraining the defendants from alienating the suit property in any manner and further to pass a decree of mandatory injunction directing defendants No.4 to 7 to release 1/5th share of the amount mentioned in the head note E to H.

For a reference, prayer clause of the suit filed by respondents No.1 & 2-plaintiffs reads as under: -

“Suit for declaration to the effect that the plaintiffs have 1/5th share in the properties mentioned below:

(a) House No.2279, measuring 30ft x 35 ft situated at Rajpura Town, District Patiala as shown as ABCD in the site plan attached which is bounded as under:

North : H. No.2280-35 ft

South: 5 ft vide passage in part of H. No.2279-35 ft

East: part of H. NO.2279-30 ft

West: Road - 30 ft

(a) Shop No.1 situated at Dutt Market, Kalka Road, Rajpura Township as shown as EFGH in the site plan attached which is bounded as under:

North : shop of Kamal Studio

South: Road.

East: existing shop of other owner

West: Kalka Road.

- (c) *House and 3 shops constructed in the abadi of Village Bhakshiwala, Tehsil Rajpura, District Patiala.*
- (d) *House No.72 situated at Gulab Nagar, Rajpura Town, District Patiala and for joint possession to the extent of 1/5th share of the plaintiffs in the above said properties.*
- (e) *An amount of Rs.15,36,805/- lying in the account of Krishna Devi, mother of the plaintiffs, bearing account No.55114965848 of State Bank of Patiala, Grain Market, Rajpura and transferred to the account No.65019860167 in the name of Darshna Devi defendant No.3.*
- (f) *An amount of Rs.2,36,347/- lying in the account of Krishna Devi, mother of the plaintiffs, bearing accounts No.65022620319, 65022695460 & 65036867548 of State Bank of Patiala, Branch Rajpura Township (Banwari).*
- (g) *An amount of Rs.5 lacs lying in the account of Krishna Devi, mother of the plaintiffs, bearing accounts No.04542010016070 & 04542010029110 of Oriental Bank of Commerce, Branch Rajpura.*
- (h) *An amount of Rs.4,09,500/- lying in the post office in the name of Krishna Devi, mother of the plaintiffs, bearing accounts No.159971, 159183, 159442 & 159483.*
- (i) *Gold approximately 60 Tolas.*

AND

Suit for permanent injunction restraining the defendants No.1 to 3 their agents, servants, representative from alienating, selling, mortgaging, encumbering the properties mentioned in the head note of A to D.

AND

Further Suit for permanent injunction restraining the

defendants No.1 to 3 their agents, servants, representative from withdrawing the amount from the office of defendants No.4 to 7.

AND

Further Suit for permanent injunction restraining the defendants No.1 to 3 their agents, servants, representative release the amount mentioned in the head note from properties E to H.

AND

Further Suit for permanent injunction restraining the defendants No.1 to 3 their agents, servants, representative from forcibly dispossessing the plaintiffs from the ground floor of H. No.2279, the detailed of which has been mentioned in the head note of the plaint.

AND

Further suit for mandatory injunction directing the defendants No.4 to 7 to release the 1/5th share of the amount mentioned in the head note from E to H.”

Petitioner-defendant No.3 filed the written statement and set up a Will dated 15.12.2014 executed by Krishna Devi, mother of the plaintiffs and defendant No.3, in favour of defendant No.3. Thereafter, the issues were framed and the case was fixed for evidence of the plaintiffs. Vide judgment and decree dated 14.09.2018, the Civil Judge (Jr. Divn.), Rajpura, by invoking the powers under Order 17 Rule 3 CPC, dismissed the suit, as the plaintiffs failed to lead any cogent evidence. Plaintiff No.1-respondent No.1 filed an appeal before the Additional Sessions Judge, Patiala, challenging the said judgment and decree dated 14.09.2018, dismissing the suit. The lower appellate Court, vide judgment dated 13.10.2021, set aside the

judgment dated 14.09.2018 and remanded the case back to the trial Court to decide the suit on merits, by granting three effective opportunities; firstly to the appellant-plaintiff on payment of costs of Rs.3,000/- and thereafter, three opportunities to the respondents-defendants for producing their evidence. The operative part of the judgment dated 13.10.2021 reads as under: -

“...So, accordingly, the appeal filed by the appellant/plaintiff is allowed with costs and the impugned judgment dated 14.09.2018 is set aside to the effect that the instant case is remitted back to the lower Court with the direction to afford three effective opportunities, firstly to the appellant/plaintiff to lead evidence subject to costs of Rs.3000/-and thereafter three effective opportunities be also granted to the respondents/defendants for producing their evidence and then matter be decided afresh. Copy of this order be sent to the learned lower Court. Record of the learned lower Court be sent back along with a copy of this judgment. Parties through their counsel are directed to appear before the learned lower Court on 15.11.2021 at 10.00 a.m. sharp. The appeal file be consigned to the record room.”

Learned counsel for the petitioner has argued that at the first instance, when the suit remained pending for a considerable long time, respondents No.1 & 2-plaintiffs did not lead any evidence, therefore, under

Order 17 Rule 3 CPC, the suit was dismissed by the trial Court. It is further submitted that at that stage, the trial Court never opted to direct defendant No.3 to lead the evidence at the first instance, as onus to set up the Will on defendant No.3. Even in the remand order passed by the lower appellate Court, it was specifically directed that at the first instance, the plaintiffs will lead the evidence, for which three opportunities will be granted and thereafter, the defendants will lead the evidence.

It is also submitted that the judgment dated 13.10.2021 passed by the lower appellate Court has attained finality, as the plaintiffs never challenged the same, therefore, there was no occasion for the trial Court to direct defendant No.3 to lead the evidence at the first instance, instead of asking the plaintiffs. It is next submitted that no reason has been assigned in the impugned order, as to why petitioner-defendant No.3 is directed to first lead the evidence, especially in view of the multiple prayers made in the plaint. It is argued that though under Order 18 Rule 1 CPC, it is specifically provided that the plaintiff has a right to begin the evidence, unless the defendant admit the fact alleged by the plaintiff and contends that either in the point of law or some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief, which he seeks, in which case the defendant has right to begin.

Learned counsel has further argued that when the case was fixed for plaintiffs' evidence prior to its dismissal, onus was on the plaintiffs to lead the evidence at the first instance and the suit was dismissed, though

later on remanded by the lower appellate Court. It is also submitted that it is not a case, which will be falling under Exception to Order 18 Rule 1 CPC, as the plaintiffs, at the first instance, had sought declaration with regard to five properties, mentioned at Sr. No.(a) to (I) and then, prayed for a decree of permanent injunction restraining defendants No.1 to 3 from alienating, selling, mortgaging or creating any encumbrance on the properties mentioned at head note A to D and further prayed for permanent injunction restraining defendants No.1 to 3 from withdrawing the amount from the office of defendants No.4 to 7, which are the State Bank of India, Oriental Bank of Commerce and Post Office. Another prayer is that defendants No.1 to 3 be restrained from taking forcible possession of ground floor of the house, details of which are mentioned at Head Note No.(a) and lastly, prayed for a decree of mandatory injunction restraining defendants No.4 to 7 to release 1/5th share of the amount mentioned in the head note E to H. It is thus submitted that the impugned orders clearly show non-application of judicial mind and mere fact that the plaintiffs set up a Will, which is relating to only issue No.4, the trial Court did not apply its judicial mind that all issues No.1 to 7 need to be decided at the time of final adjudication of the case, therefore, only on issue No.4, defendant No.3 cannot be directed to lead evidence at the first instance.

In reply, learned counsel for respondents No.1 & 2 have referred to a judgment of the Delhi High Court dated 18.07.2012 passed in **CS(OS) No.587/2017 titled as Smt. Poonam Bhanot Vs. Virender**

Sharma and others, wherein, with regard to estate of father of the parties, one of the defendant set up an **unregistered Will**, therefore, the Delhi High Court, in exercise of its original jurisdiction, directed the defendants, who set up the Will, to lead the evidence at the first instance. It is submitted that well within the powers under Order 18 Rule 1 CPC, the trial Court has rightly directed petitioner-defendant No.3 to lead the evidence, as the suit can be decided on issue No.4 itself.

Learned counsel for the remaining respondents being proforma respondents have not offered any argument.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) The suit was instituted in the year 2016 and after the issues were framed, despite availing sufficient opportunities by respondents No.1 & 2-plaintiffs, they failed to lead any evidence, therefore, the suit was dismissed under the provisions of Order 17 Rule 3 CPC. At that stage, the plaintiffs were directed to lead the evidence at the first instance.
- (b) Even when the lower appellate Court, vide judgment dated 13.10.2021, set aside the judgment and decree dated 14.09.2018 passed by the trial Court and remanded the case back to the trial Court, a specific direction was issued that it is the plaintiffs, who, at the first instance, will lead the evidence by availing three opportunities and on payment of costs of

Rs.3,000/- and only thereafter, the defendants will lead their evidence. This judgment dated 13.10.2021 has attained finality and was never challenged by the plaintiffs.

- (c) The suit filed by the plaintiffs contains multiple prayers. First prayer is with regard to declaration that the plaintiffs have 1/5th share in the properties mentioned at head note (a) to (i).

Second prayer is to grant of decree of permanent injunction restraining defendants No.1 to 3 from alienating the properties mentioned in head note (a) to (d).

Further prayer is to pass a decree of permanent injunction restraining defendants No.1 to 3 from withdrawing any amount from the office of defendants No.4 to 7.

Further prayer is grant a decree of permanent injunction restraining defendants No.4 to 7 to release the amount mentioned in head note E to H.

Further prayer is to grant a decree of permanent injunction against defendants No.1 to 3 from forcibly dispossessing the plaintiffs from part of the house mentioned at head note (a) and;

Lastly, prayer is for a decree of mandatory injunction directing defendants No.4 to 7 to release 1/5th share of the amount lying deposited with the financial institutions, as detailed in head note E to H.

A perusal of multiple prayers made in the plaint would show that the trial Court cannot decide the main suit only on the basis of evidence led on issue No.4, as the trial Court has to decide the suit on all the issues No.1 to 7. The trial Court, without going through contents of the entire plaint as well as issues framed on the basis of pleadings of the parties, has wrongly drawn a conclusion under Order 18 Rule 1 CPC. It is defendant No.3, who is directed to begin the evidence under issue No.4 alone, which is with regard to setting up of a Will, though otherwise also, the plaintiffs will have a right to lead rebuttal evidence on issue No.4, onus of which on defendant No.3.

- (d) Even otherwise, in view of multiple issues framed by the trial Court, it will be creating a confusion, if defendant No.3 is directed to lead evidence only on issue No.4 at the first instance, therefore, it would amount to evidence in affirmative by defendant No.3 and the plaintiffs will have to lead the affirmative evidence in defence with a right to defendant No.3 to lead rebuttal evidence on this issue. However, with regard to other issues, which are to be decided simultaneously at the time of final disposal of the suit, apparently onus of issues No.1 to 3 is on the plaintiffs and apart from issues No.5 to 7 is on defendants. It will be very difficult for the trial Court to follow

a pattern as to how the right to lead rebuttal evidence will be given to both the parties, therefore, the impugned orders do not reflect application of judicial mind.

Accordingly, present revision is allowed and the impugned orders dated 15.11.2021 and 25.03.2022 are set aside and it is directed that in terms of the remand order dated 13.10.2021, it is the plaintiffs, who will lead the evidence at the first instance and thereafter, the defendants will lead their evidence and then plaintiff will have a right to lead rebuttal evidence qua the issues, onus of which is on the defendants.

With the aforesaid modifications in the impugned orders, instant revision petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

14.10.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No