

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 3497 of 2019 (O&M)

Date of decision : 10.11.2022

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Taranjit Kaur

.....Petitioner

vs.

Harpinder Kaur and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. A.P. Batra, Advocate
for the petitioner.

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H. S. Madaan, J. (Oral)

As per report by the Registry, respondent No. 1 has been served through her father, which is valid service. However, she has not put in appearance, therefore, she is proceeded ex parte. Service qua respondents No. 2 to 8 had been dispensed with vide order dated 7.11.2019.

Petitioner – Taranjit Kaur was one of the defendants in the civil suit bearing case No. 375 dated 20.12.2012, filed by one Harpinder Kaur. After contest, that civil suit was dismissed by Additional Civil Judge (Senior Division), Sri Muktsar Sahib, vide judgment dated 12.10.2016. Several issues had been framed in that

suit, which for ready reference are being reproduced as under :-

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
3. Whether suit of the plaintiff is not maintainable in its present form? OPD
4. Whether the Will said to have been executed by Ranjit Singh is true and valid document? OPD
5. Whether the Will said to have been executed by Jaswinder Kaur is legal and valid document? OPD
6. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
7. Whether plaintiff is estopped by her act and conduct from filing the present suit? OPD
8. Relief.

Parties were afforded opportunities to lead evidence in support of their respective claim and they availed of those opportunities. The trial Court had given issue-wise finding taking up issues No. 1 and 2 together and verdict regarding those issues was against the plaintiff and in favour of the defendants. Whereas issues No. 3 to 7 were taken up together. The discussion with regard to these issues goes to show that the trial Court observed that suit of the plaintiff was not maintainable. No cause of action had arisen to the plaintiff to bring the suit and plaintiff was estopped by her own act

and conduct to file the suit. In view of the discussion the issues should have been decided in favour of the defendants and against the plaintiff. However, those are mentioned to have been decided in favour of the plaintiff and against the defendants, which is against the very spirit and tenor of the discussion with regard to the issues. Taranjit Kaur – defendant had brought this fact to the notice of the trial Court, moving an application under Section 152 CPC, for carrying out the necessary correction. However, vide impugned order dated 1.5.2019 the trial Court dismissed that application solely for the reason that appeal against the judgment and decree was pending before the District Judge and the applicant could take such plea in the appeal.

Feeling aggrieved by that order, the applicant-defendant has approached this Court by way of filing the present revision petition. Notice of the revision petition was given to Harpinder Kaur plaintiff in the civil suit and arrayed as respondent no.1 in the revision petition. She was served through her father but has not put in appearance therefore, she not opted to offer the contest.

I have heard learned counsel for the revisionist, besides going through the record.

Section 152 CPC deals with amendment of judgments, decrees or orders providing that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

The lines in question that the issues No. 3 to 7 are being decided in favour of the plaintiff and against defendants, seem to be result of accidental slip or some typographical mistake which can certainly be corrected by the trial court while exercising power under Section 152 Cr.P.C. The mere fact that appeal against the judgment and decree is pending does not come as a hurdle in the way of the trial Court in exercising such power and it is certainly not a case of review of the judgment as has been observed by the trial Court. Therefore, the order under revision is not sustainable and is liable to be set aside.

Accordingly, the revision petition is accepted. The impugned order under revision is set aside and a direction is issued to the trial Court to carry out the necessary correction in the relevant para of the judgment so as to reflect that issues No. 3 to 7 are decided in favour of the defendants and against the plaintiff.

A copy of order be sent to learned District Judge, Sri Muktsar Sahib, for bringing this order to the notice of the trial Court and that of the Appellate Court, where the appeal is pending.

10.11.2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No