

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

CR-2707-2022 (O&M)

Date of Decision : 14.09.2022

Bimla Devi

....Petitioner

VERSUS

Raj Rani and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Brijender Kaushik, Advocate for the petitioner.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed by the petitioner challenging the order dated 08.04.2022 whereby the application for amendment of Issue No.2(b) and shifting the onus of the same on the defendant-respondents has been dismissed.

The brief facts relevant to the present lis are that the plaintiff-petitioner filed a suit praying therein as under :

“Suit for a decree for declaration to the effect that the judgment and decree dated 16.12.1993 passed in Civil Suit No.446/1993 titled as ‘Sant Ram Vs. Ram Chander’ by the Court of Ms. Neena Chaudhary, ACJ(SD), Ambala regarding land measuring 266 Kanals 19 marlas comprising in K/R No. 50/64 khasra Nos. 14//21(7-12), 22(8-0), 23(8-0), 24/2(2-5), 24//10/2 (0-4), 10/3 (0-4), 31//16/2(4-0), 24 (2-12), 25 (8-0), 32//20 (8-0), 21 (8-0), 40// 1(8-0), 2 (8-0), 3(8-0), 4(8-

0), 5(8-0), 6(8-0), 7(8-0), 8(8-0), 9(8-0), 10(8-0), 11 (8-0), 12 (8-0), 13 (8-0), 14 (8-0), 15(8-0), 16(8-0), 17 (8-0), 18(8-0), 19(8-0), 20(8-0), 21 (8-0), 22(8-0), 23(8-0), 24(8-0), 25(8-0), 41//5(9-12), 6/1 (0-10) land situated within the revenue estate of village Bhanu, HB No. 234, Tehsil and District Panchkula as per jamabandi for the year 2007-2008; alleged to be suffered by Sh. Ram Chander S/o Sh. Radha Ram S/o Sh. Kishan Lal and mutation No.363 sanctioned on 15-6-1998 of village Bhanu District Panchkula in favour of Sh. Sant Ram s/o Sh. Ram Chander on the basis of judgment & decree dated 16-12-1993; and the Award dated 05.10.2009 passed in Case No.317/CS dated 08.09.2009 by the Permanent Lok Adalat, Panchkula in case titled 'Harish Kumar Vs. Sant Ram and Others' alleged to be suffered by Sh. Sant Ram etc and mutations No. 477 sanctioned on 14.02.2011 of village Bhanu District Panchkula in favour of defendants on the basis of the above said Award dated 05.10.2009; in favour of defendants on the basis of the above said award dated 05.10.20009' and the release deed registered as Release Deed No.3972 dated 21.02.2011 with Sub Registrar, Panchukula and mutation No.479 sanctioned on 31.03.2011 of village Bhanu District Panchkula by

defendant No. 1, 3 & 4 in favour of defendant No.2 on the basis of the above said Release deed dated 21.02.2011 and the release deed registered as Release Deed No.151 dated 16.04.2012 with Sub Registrar, Panchkula and mutation no.494 sanctioned on 14.05.2012 of village Bhanu District Panchkula by defendant No. 1, 3 & 4 in favour of defendant No.2 on the basis of the above said Release Deed dated 16.04.2012 respectively and all subsequent alienations and transfers on the basis of the Award and judgment & decree etc, are illegal, wrong, nonest, null & void against the provisions of law and as such does not effects the right of the plaintiff since the decree is based upon fraud and has been obtained by misrepresentation and under undue influence practiced by Sh. Sant Ram s/o Sh. Ram Chander upon late Sh. Ram Chander s/o Sh. Radha Ram in order to defeat the rights of the plaintiff, in the said land which is joint Hindu Family Property and as such is not binding upon the rights of the plaintiff who is joint owner and in joint possession to the extent of 1/2nd share along with defendants, being the legal heir of late Sh. Ram Chander s/o Sh. Radha Ram and the member of the joint Hindu Family and the said judgment and decree

dated 16.12.1993 and Award dated 05.10.2009, are liable to be set aside and cancelled with a consequential relief of permanent injunction restraining the defendants and their agents or any other person from alienating, transferring, mortgaging, subletting or creating any sort of charge upon the suit property detailed above, on the basis of evidence oral as well as documentary, under Order 7 Rule 1 of CPC.”

Initially issues were framed on 21.01.2017. Thereafter, an application for framing additional issues was moved by the defendant-respondents. However, the same was dismissed vide order dated 27.11.2018. The said order was challenged by the defendant-respondents in this Court in Civil Revision Petition No.195 of 2019 and vide order dated 05.12.2019 the said revision petition was allowed and order dated 27.11.2018 was set aside. Thereafter, in pursuance of order dated 05.12.2019 passed by this Court, the following additional issues were framed on 17.09.2021 :

2a) Whether the judgment and decree dated 16.12.1993 has been obtained by playing fraud, misrepresentation or by exercising undue influence upon Sh. Ram Chander ? OPP

2b) Whether Sh. Ram Chander did not appear in the Court and did not engage any lawyer and did not give

any statement and never suffered any decree dated 16.12.1993 ? OPP

4C) Whether civil court has no jurisdiction to entertain the suit with respect to the award passed by the permanent Lok Adalat ? OPD

Subsequently, an application was filed by the plaintiff-petitioner under Order 14 Rule 5 CPC for amendment of issue No.2(b) and shifting the onus of the same on the defendant-respondents. The said application was contested by the defendant-respondents and the same was dismissed vide the impugned order dated 08.04.2022. Hence, the present revision petition.

It is pertinent to note that the order dated 17.09.2021 framing the additional issues pursuant to the order of this Court dated 05.12.2019 is not under challenge in the present revision.

Learned counsel for the plaintiff-petitioner would contend that the onus of issue No.2(b) has wrongly been cast on the plaintiff-petitioner and the same ought to have been cast on the defendant-respondents. In support of his contention he has relied upon the judgment of the Supreme Court in the case of **Krishna Mohan Kul alias Nani Charan Kul &Anr. Vs. Pratima Maity & Ors. [AIR 2003 SC 4351]**.

Heard.

In the present case the plaintiff-petitioner has filed a suit for declaration challenging the judgment and decree dated 16.12.1993 and the award dated 05.10.2009 on the ground of fraud. In para No.13 of the plaint

it has specifically been averred that Ram Chander never appeared in Court; nor engaged any lawyer; nor gave any statement and never suffered any decree and all this was done by Sant Ram by playing fraud with late Ram Chander as well as by playing fraud with the Court. That being the stand taken by the plaintiff-petitioner, the issue No.2(b) has rightly been framed and the onus rightly cast on the plaintiff-petitioner. The judgment in the case of **Krishna Mohan Kul alias Nani Charan Kul & Anr.** (*supra*) would have no applicability to the facts of the present case inasmuch as the issue involved in the said case was challenge to the settlement deed which was a document propounded by the defendant therein. The facts in the said case are totally distinguishable. It is further to be noted that the order dated 17.09.2021 has also not been challenged before this Court.

In view of the discussion above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

September 14, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO