

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.4281 of 2019

Date of Decision : 20.12.2022

Balbir Singh

....Petitioner

VERSUS

Tarsem Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shubham Chander, Advocate for
Mr. Sunny K. Singla, Advocate for the petitioner.

Mr. Rahul Bhargava, Advocate for respondent no.1.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India against the order dated 20.05.2019 whereby the application filed by the plaintiff-petitioner for leading additional evidence has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration, wherein following prayers were made:

“A) Suit for Declaration to the effect that the Kirpal Singh (now deceased) son of Sarwan Singh son of Hazara Singh resident of Bir Imamgarh, Tehsil Malerkotla, District Sangrur was nominee of Jaspal Singh (now deceased) son of Sarwan Singh son of Hazara Singh resident of Bir Imamgarh, Tehsil Malerkotla, District Sangrur in the record of the Bir Imamgarh Harijan Co-operative Collective Farming Society Limited, Bir Imamgarh, Tehsil Malerkotla, District Sangrur and the plaintiffs are legal heirs and

representatives of deceased Kirpal Singh son of Sarwan Singh son of Hazara Singh and after the death of Kirpal Singh and Jaspal Singh the record of the Bir Imamgarh Harijan Co-operative Collective Farming Society Limited, Bir Imamgarh Tehsil Malerkotla District Sangrur and revenue record as well, be amended and updated accordingly in favour of the plaintiffs in place of Jaspal Singh and the plaintiffs are entitled to retain the possession of land measuring 42 kanal 1 marlas bearing khasra nos. xx xx xx xx xx xx according to Jamabandi for the year 2006-07 situated at Village Bir Imamgarh Tehsil Malerkotla, District Sangrur and for further declaration to the effect that the alleged Pedigree table (Kursinama) of deceased Jaspal Singh son of Sarwan Singh resident of Village Bir Imamgarh, Tehsil Malerkotla allegedly and wrongly prepared in favour of defendant in connivance with the revenue authorities, is illegal, null, void and is liable to be set aside.

B) Suit for issuance of permanent prohibitory injunction restraining the defendant herself or through her attorneys, agents, servants, associates etc. from dispossessing/interfering in the peaceful possession of the plaintiffs over the land measuring 42 kanal 12 marlas bearing Khasra No.8//4/4-0, 7/4-14, 8/4-9, 9/2-

10, 12/4-7, 13/8-0, 14/3-12, 17/2-7, 18/5-5, 19/2-17 situated at Village Bir Imamagarh, Tehsil Malerkotla, District Sangrur, fully detailed in head note 'A' of the plaint, illegally, forcibly and without due course of law or any other relief, which this Hon' ble Court may deem fit and proper."

The evidence of the plaintiff-petitioner was closed by order dated 09.11.2017. Aggrieved by the said order, CR No.1243 of 2018 was preferred, which was allowed vide order dated 22.02.2018 granting the plaintiff-petitioner one effective opportunity to get himself cross-examined so that his evidence can be read. Thereafter, the plaintiff-petitioner availed the said opportunity. Subsequently, an application was filed by the defendant-respondents under Order XIV Rule 5 CPC for framing of additional issues which was allowed vide order dated 20.02.2019 (Annexure P-8). A specific statement was made by learned counsel for the plaintiff-petitioner that they did not want to lead any evidence after framing of the additional issues and the case was fixed for rebuttal evidence. Thereafter, the present application for permission to lead additional evidence was filed on 20.05.2019 primarily to bring on record evidence to prove that the defendant-respondent no.1 was not the daughter of Jaspal Singh. The said application was dismissed vide the impugned order dated 20.05.2019. Hence, the present revision petition.

Learned counsel for the plaintiff-petitioner would contend that the documents now sought to be produced as additional evidence were not in

possession of the plaintiff-petitioner at the time of leading his evidence and that the same have been obtained subsequently.

Per contra learned counsel for the defendant-respondent no.1 has pointed out that earlier the evidence of the plaintiff-petitioner was closed vide order dated 09.11.2017 and vide order dated 22.02.2018 passed in CR No.1243 of 2018 one opportunity was granted to the plaintiff-petitioner to get himself cross-examined. The said opportunity was availed of. Subsequently, at the time of framing of additional issues, a categorical statement was made by the plaintiff-petitioner that they did not want to lead any further evidence. Learned counsel for the defendant-respondent no.1 has further contended that no details are forthcoming from the application as to how and when these documents came to the knowledge of the plaintiff-petitioner.

I have heard learned counsel for the parties.

In the present a perusal of the application (Annexure P-4) reveals that the same is totally bereft of any reasons as to why the evidence could not be led earlier. The plaintiff-petitioner approached the Civil Court by filing a suit for declaration, primarily for declaring that Tarsem Kaur, defendant-respondent no.1 herein, was not the daughter of Jaspal Singh. The documents now sought to be led by way of additional evidence are all in support of the averment that the defendant-respondent no.1 is not the daughter of Jaspal Singh. The said evidence was to be led in affirmative which the plaintiff-petitioner failed to do. The application does not state as to how and when the plaintiff-petitioner came in possession of these

documents. Further, the present application appears to be nothing but an endeavour to fill in the lacuna in the case, which cannot be permitted in law.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

It is made clear that any observation made in this order shall not be treated as an expression of opinion of this Court on the merits of the case.

20.12.2022
jk

(ALKA SARIN)
JUDGE

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