

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6490 of 2019 (O&M)
Date of decision: 16.12.2022

Harpal Singh

..Petitioner

Versus

Ranjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parambir Singh (Sunny), Advocate
for the petitioner.

Mr. Bhupinder Kumar Gupta, Advocate
for the power of attorney holder of
respondent no.1 (Ranjit Kaur)

Mr. Jasjeet Singh Dhaliwal, Advocate
for respondent no.12.

Mr. Shubham Goyal, Advocate
for respondent no.20.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein, is defendant no.16 in the plaintiff's suit
for grant of decree of declaration. The caption of the suit reads as under:-

“Suit for declaration to the effect that the plaintiff is owner in possession of 1/3rd share out of 1/7th share of property comprised in Khewat NO.988, Khatauni No.1222, Rect. NO.291 Khasra no.25(8-0), Rect. No.292, Khasra NO.21 (2-9), Rect. No.294, Khasra No.1 (1-7), Rect. No.295, Khasra No.5/2 (4-11), Part 4 (6-17, Khewat No.989, Khatauni No. 1223, Rect. No.291 Khasra No. 16 (7-10) situated at GT Road, Near Guru Nanak Ice Factory, Kartarpur, Distt. Jalandhar being the legal heir of Late Kartar Singh S/o Bhagat Singh who died intestate in the year 1974.

AND

Suit for the decree of declaration that the mutation No. 4350 dated 26.07.1974 sanctioned by the Naib Tehsildar/Revenue officer, Kartarpur with respect to the estate of Late Kartar Singh son of Late Bhagat Singh in favour of Late 'shar Kaur i.e grand mother of the plaintiff is illegal, null & void and without any right and had been sanctioned on the basis of illegal and forged documents was also the result of impersonation of actual legal heirs.

AND

Suit for the decree of declaration that the Will executed by Late Smt. Isha Kuur wife of Late S.Kartar Singh bearing to.54/3 dated 05.09.1990 is illegal being forged and fabricated and even if it be held to have been executed by Ishar Kaur, even then the same is void abinitio being an excess of share holding of Ishar Kaur and that the same does not in any manner interfere with the legal rights of the plaintiff which he acquired from her grand father to the lure of 1/3rd share out of 1/7th share and that the order passed by Sh. Mohinder Pal, PCS, SDM, Jalandhar II, on 28.06.2006 sanctioning the mutation No. 10206 on the basis of the Will alleged to have been executed by late Ishar Kaur too is illegal and is based on forged and fabricated documents and is in no way binding upon the plaintiff nor does it in any manner interfere with his legal rights in the suit property property as stated above and that the order passed in appeal by the court of S. Sukhwinder Pal Singh Murar, Additional Deputy Commissioner in case No.62/REA instituted on 25.07.2006 and decided on 09.07.2006 too is illegal and is not binding upon the legal rights of the plaintiff in the suit property and that the order passed by S. Bhagwant Singh, Additional Deputy Commissioner

(Appeals) in case No. RR15 of 2009 decided on 10.11.2009 too is illegal and does not in any manner affects the legal rights of the plaintiff in the suit property and similarly, the order passed by the Financial Commissioner, Punjab, in respect of the above said mutation, too is illegal and is not binding on the plaintiff in any manner. and that the beneficiaries of the mutation No. 10206 have no rights or title in the suit properties and as such, are incompetent to seek the partition of the joint land on the basis of the above said illegal mutations sanctioned by Sh.Mohinder Pal, PCS, SDM, Jalandhar-II, on 28.06.2006

AND

For declaration to the effect that the plaintiff is a co-owner in possession of House No.2899 situate in Mohalla Purani Kotwali, Kartarpur measuring 7 marlas shown red in the site plan and bounded as under :-

East: Rasta

West: House others

North: Bahadur Singh

South Gali

all with all rights appertinent thereto being the legal heir of late Kartar Singh son of Bhagat Singh and for declaration that the sale deed executed by defendants No.5 to 7 bearing No.269 dated 01.07.1999 in favour of defendant No.19, Gurbachan Singh son of Gian Singh, resident of Mohalla Lohara Kartarpur and sale deed bearing No.636 dated 15.09.2011 executed by defendant No. 19 in favour of defendant No.20 i.e. Usha Bajaj wife of Rajinder Bajaj, resident of Khalifa Gate, Kartarpur, presenting residing in Mohalla Lohara, Kartarpur are null and void and are void abnition being without consideration and having been executed without any authority and as such, the same are not in any manner

binding on the rights of the plaintiff and are thus liable to be set aside/cancelled being the result of fraud and legal right

AND

Suit for separation of possession by way of partition of the land by metes and lands with respect to the joint property.

AND

Consequently, Suit for the Separate Possession after partition of the land by metes and bounds with respect to Joint Properties i.e, comprised in Khewat No 988, Khatauni No.1222, Khastu No 291//25 (8-9), 292//21 (29), 294//11-7), 2957/5/2 (4-11), Part 4 (6-17), Khewat No.989, Khatauni No. 1223, Khasra No.291//16 (7-10) situated at G.T Road, Near Guru Nanak Ice Factory, Kartarpur, Distt. Jalandhar and No 2899, situated at Mohalla Purani Kotwali, Kartarpur, Distt. Jalandhar measuring about 7 Marlas, being legal heir of Late Kart Singh Syo Sh.Bhagat Singh.

AND

Suit for Permanent Injunction restraining the defendants, their agents, attorneys, nominees, employers or representative etc. in any capacity from further alienating, mortgaging, exchanging, leasing, creating any charge or disposing off the land comprised in Khewat No 988, Khatauni No.1222, Khasra No 291//25 (8-0) 292//2 (2-9), 294//1 (1-7). 2957/5/2 (4-11), Part 4 (6-17), Khewat No.989, Khatauni No.1223, Khasra No.291//16 (7-10), situated at G.T Road, Near Guru Nanak Ice Factory, Kartarpur, Distt. Jalandhar and further restraining the defendant no.20, his agents, attorney, representative from further alienating/mortgaging/selling the H.No.2899, situated at Mohalla Purani Kotwali, Kartarpur, Distt. Jalandhar

measuring about 3 1/2 Marlas.”

2. The defendant no.12, 16 and 18 filed the counter claim. One of the questions in issue before the court is with regard to the genuineness and validity of the Will allegedly executed by late Smt. Ishar Kaur on 05.09.1990. The aforesaid Will is said to have been propounded by defendant no.3, 5 to 11.

3. The trial Court culled out the following issues for adjudication on 02.07.2018:-

- “1. Whether the plaintiff is entitled for the relief of declaration, as prayed for?OPP*
- 2. Whether the plaintiff is entitled for the relief of separate possession, as prayed for?OPP*
- 3. Whether the plaintiff is entitled for the relief of permanent injunction , as prayed for?OPP*
- 4. Whether the suit of the plaintiff is not maintainable?OPD*
- 5. Whether the plaintiff has not come to the court with clean hands?OPD*
- 6. Whether the suit is no properly valued for the purpose of court fee and jurisdiction?OPD*
- 7. Whether the suit is liable to be dismissed for non-joinder of court fee and jurisdiction?OPD*
- 8. Relief.”*

4. Thereafter, on the basis of the counter claim, the following issues were framed by the Court:-

- “3(a) Whether the counter claimants are entitled for possession by way of partition?OCC*

3(b) Whether the counter claimants are entitled for declaration?OCC

3(c) Whether the counter claimants are entitled for permanent injunction as prayed for?OCC

3(d) Whether the counter claimants have no cause of action to file the counter claim?OPR”

5. The trial Court has refused to cull out the issue with regard to the validity and genuineness of the Will dated 05.09.1990, allegedly executed by late Smt. Ishar Kaur. An application filed by defendant no.16 (petitioner herein) has been dismissed on the ground that the issues no.1 to 3, 3(a) to 3(c) are the omnibus issues.

6. As per Order XIV Rule V CPC, the Court may, at any time, before passing a decree amend the issues or frame additional issues. Order XIV Rule I CPC provides that each material proposition affirmed by one party and denied by other is required to form the subject matter of a distinct issue. The issues can be related to the facts or the law.

7. The practice of framing the omnibus issues cause prejudice to the parties to the litigation. By culling out the proper issues, the Court informs the parties about the points which are the fact in issue before the Court on which the parties are required to lead sufficient evidence. In fact, the trial courts have started culling out the issues without examining the pleadings of the parties in dispute. While culling out the issues for adjudication, the Court is required to examine the pleadings in order to find out the various points in issue before the Court.

8. Keeping in view the aforesaid facts, the impugned order dated 19.08.2019 is set aside. There shall be the following additional issue that the

court will decide:-

“ Whether late Smt. Ishar Kaur executed a genuine and
valid Will in favour of defendant no.3 and 5 to 11?”

9. With these observations above, the revision petition is allowed.
10. All the pending miscellaneous applications, if any, are also
disposed of.

December 16, 2022
nt

(ANIL KSHETARPAL)
JUDGE

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