

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8001 of 2019

Date of Decision: 30.05.2022

Balwinder Singh

... Petitioner(s)

Versus

Surinder Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Harsh Bunker, Advocate
for the petitioner(s).

Mr. Sahil Soi, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The petitioner is a plaintiff in a suit for grant of decree of declaration to the effect that he is exclusive owner of the land measuring 49 kanals and 17 marlas. He has also sought declaration that the partition order dated 22.04.2013, passed by the District Revenue Officer-cum-Assistant Collector Ist Grade, Jalandhar and the order dated 08.07.2015, passed by the Additional Deputy Commissioner-cum-Collector, Jalandhar, are wrong, illegal and void. In the alternative, the plaintiff prays for grant of decree of declaration that he is owner to the extent of half share of house located in village Chak Muglani, Tehsil Nakodar, District Jalandhar.

2. During the pendency of a suit, an application, filed by the petitioner for permission to amend the plaint in order to incorporate the plea of family settlement dated 11.04.2000 was allowed by the Court on

22.08.2019. Thereafter, neither the trial Court framed any additional issue

nor granted an opportunity to the parties to lead further evidence. An application, filed by the petitioner on 27.09.2019 for permission to lead additional evidence, has been dismissed on the ground that after deletion of Order XVIII Rule 17A CPC, there is no provision for grant of opportunity to lead additional evidence.

3. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book.

4. In the considered opinion of this Bench, the order passed by the trial Court suffers from two fundamental errors. Firstly, after the amendment was allowed, the Court was required to frame a distinct issue on the validity and correctness of the memorandum of family settlement dated 11.04.2000, After framing the issue, the trial Court was required to grant an opportunity to both the parties to lead evidence on the aforesaid issue. Secondly, the Court has also erred in overlooking the inherent powers available under Section 151 CPC which includes the enabling power to grant permission to lead additional evidence, in the interest of justice.

5. Keeping in view the aforesaid facts, the present revision petition is allowed and the order, under challenge is set aside while directing the trial Court to frame an issue on the correctness of the alleged memorandum of family settlement and thereafter, grant an opportunity to both the parties to lead evidence.

(Anil Kshetarpal)
Judge

May 30, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No