

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-2327-2018

Date of Decision: 7.8.2023

Tilak Raj Sharma through his LR Swatanter Bala

....Petitioner

VERSUS

Sourabhdeep Sharma and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Rajat Anand, Advocate,
for the petitioner.

Mr. Akhilesh Vyas, Advocate,
for respondents No.1 and 2.

None for respondents No.3 and 5.

KARAMJIT SINGH, J. (Oral)

Present revision petition has been filed by the petitioner/plaintiff against order dated 23.3.2018 passed by the Court of Civil Judge, Junior Division, Amritsar whereby the application filed on behalf of the petitioner under Order 14 Rule 5 CPC for framing of additional issue, has been dismissed.

2. Present petition is resisted by counsel for respondents No.1 and

2.

3. I have heard counsel for the parties.

4. Counsel for the petitioner submits that initially, Tilak Raj Sharma father of the petitioner namely Swatanter Bala filed suit for permanent injunction restraining the respondent/ defendants-

Sourabhdeep Sharma, Mandeep wife of Sourabhdeep Sharma, Karaj Singh

Dairywala, , Gurpreet Singh and Meharinder Singh alias Mehar from

alienating the suit property and further, the suit for declaration to the effect that Tilak Raj Sharma has disinherited respondents No.1 and 2 from his moveable and immoveable properties vide duly attested affidavit published in newspaper Nawan Zamana, Amritsar dated 18.12.2012 with decree for mandatory injunction to direct respondents No.1 and 2 to vacate the suit property; that Tilak Raj Sharma died and his daughter Swatanter Bala stepped into his shoes and is pursuing the suit. Counsel for the petitioner submits that in the plaint, there are specific pleadings that Tilak Raj Sharma disinherited respondents No.1 and 2 i.e. Sourabhdeep Sharma and Mandeep from his entire moveable and immovable property vide duly attested affidavit published in newspaper dated 18.12.2012. It is further submitted that respondents No.1 and 2 filed written statement to the amended plaint wherein they simply denied the fact that Tilak Raj Sharma had disinherited them from his properties. Counsel for the petitioner further submits that specific denial with regard to the aforesaid affidavit was made by respondents No.1 and 2 when Sourabhdeep Sharma appeared in the witness box as DW2 and denied the signatures of his grandfather Tilak Raj Sharma on the affidavit Ex.P7. Counsel for the petitioner further submits that immediately thereafter, an application was filed by the petitioner under Order 14 Rule 5 CPC on 15.3.2018 for framing of additional issue as follows : -

a) Whether the disinherited deed by way of registered affidavit dated 18.12.2012 is valid one? OPP”

5. The said application was contested by respondents No.1 and 2 and was finally declined by the learned trial Court vide order dated 23.3.2018. Counsel for the petitioner submits that as per Order 14 Rule 5

CPC, the Court may at any time before passing a decree, amend issues or frame additional issue and as such, the impugned order deserves to be set aside.

6. Present petition is contested by counsel for respondents No.1 and 2 who *inter alia* contends that issues which are already framed by the learned trial Court does not need any amendment and are properly framed. Counsel for respondents No.1 and 2 further submits that the petitioner was well aware of the matter in dispute from the very beginning but remained silent at the initial stage and now the case is fixed for rebuttal evidence and at this belated stage, the petitioner intends to lead fresh evidence under the guise of an application moved under Order 14 Rule 5 CPC. Counsel for respondents No.1 and 2 while supporting the impugned order submits that the present revision petition is devoid of merits and deserves to be dismissed.

7. I have considered the submissions made by the counsel for the parties.

8. There is no doubt that Tilak Raj Sharma father of Swatanter Bala and grandfather of respondent No.1 filed civil suit wherein Tilak Raj Sharma pleaded that he has disinherited respondent No.1 and his wife Mandeep (respondent No.2) vide duly attested affidavit published in the newspaper dated 18.12.2012. The suit was contested by respondents No.1 and 2. The issues were framed on 9.1.2017 by the learned trial Court. Thereafter, vide order dated 14.3.2018, the learned trial Court again framed issues while under the impression that prior to that, the Court did not frame issues on the basis of the pleadings of the parties. Issue dated 14.3.2018 were of general nature with regard to declaration as prayed for, injunction as

prayed for, mandatory injunction as prayed for, maintainability of suit and misjoinder and non-joinder of parties. On 14.3.2018 or earlier to that, no specific issue was framed with regard to duly attested affidavit of Tilak Raj Sharma published in the newspaper dated 18.12.2012 whereby respondents No.1 and 2 were said to be disinherited from his estate by Tilak Raj Sharma. On 15.3.2018, the petitioner filed an application under Order 14 Rule 5 CPC for framing of specific issue with regard to aforesaid document of disinheritance executed by Tilak Raj Sharma. Admittedly, the suit at present is fixed for rebuttal evidence, thus, making it clear that the suit has not been finally disposed of.

9. This Court is of the view that although issue of declaration and mandatory injunction as framed on 14.3.2018 may also cover document of disinheritance dated 18.12.2012 as has been relied upon by the petitioner and her predecessor-in-interest but once the parties are specific and categorical in their respective stand, the learned trial Court has to be conscious while framing issue so as to decide the dispute between the parties in an effective manner to advance substantive justice. The application filed by the petitioner under Order 14 Rule 5 CPC could not be disposed of simply on the ground that the same has been filed at a belated stage. Further in case, the additional issue with regard to publication dated 18.12.2012 regarding disinheritance of respondents No.1 and 2 is framed, respondents No.1 and 2 are not going to be prejudiced, the reason being they will be given permission to lead evidence in rebuttal of the said additional issue after recording of evidence, if any, led by the petitioners in discharge of the said issue.

10. In view of the above discussion made hereinabove, the

impugned order dated 23.3.2018 is hereby set aside. Consequently, the present revision petition is allowed and following additional issue is framed for purpose of adjudication by the learned trial Court : -

“1(a) Whether disinheritance deed by way of attested affidavit of Tilak Raj Sharma duly published in the newspaper Nawan Zamana, Amritsar dated 18.12.2012 is valid and is binding on defendants No.1 and 2? OP Plaintiff.

11. Learned trial Court is directed to grant one opportunity to the petitioner to lead her evidence in support of the aforesaid additional issue and thereafter, opportunity is to be granted to respondents No.1 and 2 to lead evidence in rebuttal.

12. The revision petition stands disposed of in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

August 7, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No