

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

229

CR No.5279 of 2017

Date of Decision: 09.05.2023

Sushma Sharma and Others

....Petitioners

VERSUS

Usha Rani and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.C. Kinra, Advocate for the petitioners.

Mr. H.K. Aurora, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 15.07.2017 whereby the application filed by the plaintiff-petitioners for framing an additional issue has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioners filed a suit for declaration to the effect that they are the joint owners to the extent of 1/3rd share in respect of –

a) House bearing No. 45, situated at Balwant Nagar, Jalandhar, built on area measuring 10 marlas, shown red in the site plan attached and bounded as under:

East: House of Gupta & Professor

West: Road

North: House of Mr. Uppal

South: House of Kanta.

b) and further to the effect that the sale deed executed by the defendants No.2 to 4 in favour of the defendant

No.9 in respect of the land measuring 8 kanals 10 marlas out of 13 kanals 4 marlas comprised in Khata No.280/396, 459/639-640-641-642 Khasra No.48//20/2(1-6) 48//19/3(1-8) 153(0-3) 50//13/4(1-3) 14/1(2-18) 48//21/2(3-4) 22/1(2-12) 50//13/3(0-9) 177(0-1) as per entries contained in the copy of the jamabandi for the year 2000-01 situated at Village Kandola, Tehsil and District Jalandhar for a sum of Rs.5,31,500.00 vide sale deed dated 17.12.2003 document No.925 is illegal, unlawful, null & void, without any authority, more than share and does not confer any title to the defendant No.9 and is liable to be set aside and further to the effect that if any alienation is made out of the land in dispute, the same is illegal and unlawful and is not binding on the rights of the plaintiffs in any manner and is liable to be set aside and further to the effect that the Mutation, if any sanctioned in the names of the defendants or their vendees is also illegal, unlawful, result of misrepresentation and fraud and not binding on the rights of the plaintiffs.

AND FURTHER to the effect that the Mutation sanctioned in favour of the defendants No.2 to 4 is illegal, unlawful, null & void, not binding upon the rights of the plaintiffs and further to the effect that the alienation if any, made on the basis of the said mutation

is also illegal, unlawful, null & void and is not binding on the rights of the plaintiffs and the same is liable to be set aside.

Suit for joint possession of 1/3 share of the above properties to the extent of 1/3 share.

AND FURTHER to the effect that the plaintiffs are also entitled to 1/3 share in the movable estates, including FDRs, Savings Account with United Commercial Bank, Adampur Branch or any other bank.

ON THE BASIS OF natural succession and the defendants No.1 to 5 have no right, title or interest in the said 1/3 shares of the plaintiff.

WITH

CONSEQUENTIAL relief of suit for permanent injunction, restraining the defendants No.1 to 5, their attorneys, associates, agents or representatives from selling, mortgaging, exchanging, transferring the properties mentioned in the head note (a) and (b), any specific portion, more than their share and further from changing the nature of the property AND further from changing the nature of the property and further from withdrawing any amount against the movable properties, detailed in the head note, left by Smt. Kesri Devi daughter of Shri Ram Dass.

3. The defendant-respondents herein filed a written statement wherein a Will dated 23.11.1998 was propounded in their favour alleged to

have been executed by Smt. Kesri Devi. During the pendency of the suit, the plaintiff-petitioners moved an application for framing of an additional issue qua the Will. A reply was filed to the said application and vide the impugned order dated 15.07.2017 the application has been dismissed on the ground that the case falls in the category of Samadhan cases and that the proposed issue is already covered under the issues framed by the Court. Hence, the present revision petition.

4. Learned counsel for the plaintiff-petitioners would contend that one of the issues framed is “whether the plaintiffs are entitled to declaration as prayed for? OPP” and as per the impugned order the said issue would cover the controversy in hand regarding the Will. It is further the contention of learned counsel for the petitioners that since the Will has been propounded by the defendant-respondents herein hence specific issue qua the Will dated 23.11.1998 ought to have been framed and onus ought to have been cast upon the defendant-respondents.

5. *Per contra* learned counsel for the defendant-respondents has contended that the issue is already covered under the issue No.1 as framed by the Court on 13.05.2011 “whether the plaintiffs are entitled for declaration as prayed for? OPP”. Learned counsel for the defendant-respondents has further contended that the application was filed at a belated stage and hence the same has rightly been dismissed by the Court below.

6. Heard.

7. In the present case, admittedly, the Will dated 23.11.1998 executed by Smt. Kesri Devi has been propounded by the defendant-respondents. The issue whether the plaintiff-petitioners are entitled to declaration onus of which is cast upon the defendant-respondents would

definitely not cover the question whether Smt. Kesri Devi had executed a valid Will dated 23.11.1998 as the onus to prove the due execution of the Will would be on the defendant-respondents who had propounded the Will. The Trial Court has erred in not framing an issue qua the Will propounded by the defendant-respondents.

8. In view of the above, the present revision petition is allowed. Additional issue is framed as under :

“Whether Smt. Kesri Devi executed a valid Will dated 23.11.1998 ? OPD”

9. For further proceedings, the parties through their counsel shall appear before the Trial Court on 26.05.2023, the date already fixed there.

10. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

09.05.2023
jk

(ALKA SARIN)
JUDGE

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