

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 6524/2016

Date of decision:23/02/2023.

Krishan

.....Petitioner.

Vs.

Ram Pal and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vivek Singla, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in the present revision petition is to set aside the impugned order dated 25.2.2014 (Annexure P-1) passed by Civil Judge (Junior Division), Gohana whereby the application filed by the petitioner for correcting entries made in the Khatoni and Field Book has been dismissed.

Brief facts of the case are that the respondents/plaintiffs filed a suit for possession by way of partition of suit land. In the said suit petitioner moved an application for appointment of Local Commissioner to produce/place on record the details of the land to be partitioned. Judgment and decree dated 9.2.2004 (Annexure P-3) was passed in accordance with

the report of the Local Commissioner. However, subsequently, the petitioner came to know that at the time of preparing the Field Book, khatoni and site plan of Plot No.5 measuring 260 square yards; plot no.22 measuring 267 square yards; and plot no.58 measuring 162 square yards, total measuring 689.89 yards, which had been allotted to father of the petitioner namely Ram Singh son of Sh. Shiv Lal, inadvertently remained to be mentioned in the khatoni.

It is submitted by the learned counsel for the petitioner that said mistake had occurred on the part of the Local Commissioner. Accordingly the petitioner moved present application dated 23.2.2013 (Annexure P-4) seeking correction in khatoni and Field Book of Abadi Deh of Village Mudlana Thola Bilan, Tehsil Gohana, District Sonapat.

A perusal of the said application Annexure P-4 shows that it was not mentioned therein under which provision application has been filed. It is submitted by the Id. Counsel for the petitioner that the Id. Trial Court has illegally dismissed the said application of the petitioner by *presuming* the same to have been filed u/s 152 CPC. It is submitted that the Id. Trial Court was patently in error in making said presumption as the application of the petitioner shows that no provision has been mentioned therein. It is submitted that the relevant provision as applicable in the present case is Section 153 CPC wherein all necessary amendments as sought by the petitioner were required to be made. It is submitted that grave injustice has been caused to the petitioner in view of the said assumption by the Trial Court. It is submitted that even if the application had been taken to be made u/s 152 CPC, even then the Id. Trial Court had ample powers u/s 153 CPC and could have molded the application by granting necessary relief in view

of the facts and circumstances of the case. It is submitted that the petitioner was entitled to relief sought by him which was in consonance with the final decree and it was only due to an omission in the report of the Local Commissioner that the present error was occasioned, and to do complete justice to the parties, it was required that the application of the petitioner be considered u/s 153 CPC. It is further submitted that no prejudice would be caused to the opposite party if the said correction had been made as the same was in consonance with the final decree. It is reiterated that even if it was assumed that the application was moved by the petitioner u/s 152 CPC, even then mere wrong mentioning of provision would not defeat the right/ relief sought by the petitioner.

Heard ld. Counsel for the petitioner.

Despite service no one has put in appearance on behalf of the respondents. Hence, vide order dated 9.2.2023 respondents were ordered to be proceeded against ex parte.

After hearing the learned counsel for the petitioner and keeping in view the facts and circumstances of the present case, I deem it just and proper to remand the matter back to the ld. Trial Court in view of the fact that a perusal of the application dated 23.2.2013 (Annexure P-4) moved by the petitioner for correction in Khatoni and Field Book, clearly reveals that no provision has been mentioned therein, yet the Trial Court dismissed the same presuming it to have been made u/s 152 CPC.

In view of the above, present revision petition is allowed, impugned order dated 25.2.2014 (Annexure P-1) is set aside and the matter is remanded back to the Trial Court to consider the application dated 23.2.2013 (Annexure P-4) moved by the petitioner for correction in Khatoni

and Field Book by considering the same to have been filed u/s 153 CPC, and thereafter, pass appropriate orders in accordance with law.

However, nothing stated above shall be construed to be an opinion or expression on the merits of the case, and the ld. Court below shall proceed independently of the observations made in the present case, which are only for the purpose of adjudicating the present petition.

Further, since the matter has already been delayed considerably, it is directed that the ld. Trial Court shall decide the said application of the petitioner in a time bound manner preferably within a period of six months from the date of receipt of a copy of this order.

Disposed of as above.

23/02/2023

Joshi

(Nidhi Gupta)

Judge

Whether speaking/reasoned

Whether reportable

Yes

Yes/No