

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CR-1071-2022 (O&M)

Date of Decision : 24.05.2023

Charta Ram deceased through L.Rs. Shanti Devi

...Petitioner

Versus

Preeto Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Namit Khurana, Advocate for the petitioner.

Mr. Krishan Singh, Advocate for respondents No. 1 to 4.

Harsimran Singh Sethi J. (Oral)

CM-10467-CII-2022

As the main petition is listed for today, the present application seeking preponement of the petition has become rendered infructuous.

CR-1071-2022

1. The present civil revision petition has been filed challenging the order dated 13.01.2022 by which, the application filed by the petitioner-defendant for permission to summon the Halqa Patwari along with record of Will dated 25.05.1992 so as to defend the additional issue framed, was rejected by the court below.

2. Learned counsel for the petitioner submits that the additional issue was framed vide order dated 10.09.2021 on the asking of the

respondent-plaintiff qua the proving the Will, which issue was required to be proved by the defendant. After the framing of the additional issue, in order to prove the Will in question, the Halqa Patwari was sought to be summoned by the petitioner-defendant so as to produce the original record with regard to Will dated 25.05.1992, as onus of proving the said Will was put upon the petitioner-defendant. Learned counsel for the petitioner-defendant submits that despite the fact that the original Will was with the Revenue Authorities, keeping in view the fact that the Will in question was acted upon for carrying out the revenue entries in the year 1994 but the said prayer of the petitioner so as to summon the Halqa Patwari so as to prove the Will has been rejected by the trial court on the ground that the defendant cannot be allowed to lead evidence as the same has already been led and the Halqa Patwari cannot be summoned for the reason that prior to the filing of the application, the exact possession of the original Will was within the knowledge of the defendant and no such request was made to summon the Halqa Patwari at the relevant time.

3. Learned counsel for the petitioner-defendant argues that once an additional issue has been framed by the trial court on 10.09.2021 and the onus to prove the Will in question has been put upon the defendant, it was incumbent upon the Court to give opportunity to the defendant to prove the said additional issue, which has been framed even if the same is to be done by summoning the revenue official.

4. Learned counsel for the respondents-plaintiffs submits that as the issue of Will was already existing in the pleadings and whatever

evidence the petitioner wanted to bring on record with regard to the Will, should have been brought on record and the plea being taken by the petitioner-defendant that after the framing of the additional issues, he is required to lead appropriate evidence, has rightly been rejected by the courts below after appreciating the argument in correct perspective.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. The contention raised by learned counsel for the petitioner-defendant as noticed hereinbefore carries weight. Once on the asking of the respondents-plaintiffs, an additional issue was framed with regard to the proving of the Will dated 25.05.1992 and the onus to prove the additional issue framed was put upon the defendant, fresh opportunity needs to be given to the defendant to prove the said issue, hence, the permission to summon Halqa Patwari along with the original record of the Will dated 25.05.1992, which is with the Revenue Authorities cannot be treated to be an arbitrary request in the facts and circumstances of the present case. Once the additional issue is framed, the parties, who are required to prove the said issue, needs to be given adequate opportunity to prove the same by leading cogent evidence after the framing of the said issue.

7. Keeping in view the above, the present civil revision petition is allowed. The order dated 13.01.2022 is set-aside. The application filed by the petitioner-defendant to summon the Halqa Patwari along with

original record of Will dated 25.05.1992 is allowed. The trial court is requested to proceed further in accordance with law.

8. Petition is allowed.

CM-10468-CII-2022

As the main petition is allowed, the present application stands disposed of.

May 24, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No