

108

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1413-2023 (O&M)

Date of Decision: 03.03.2023

Jagjit Kaur

....Petitioner

Versus

Davinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amandeep Singh Jawandha, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 03.02.2023 passed by Ld. Civil Judge (Jr. Divn.), Ludhiana, whereby the application for service of Special Kanungo to prepare the excerpt and to furnish the information regarding nature of land in suit filed by petitioner, was dismissed.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Petitioner/plaintiff filed a suit for declaration to the effect that plaintiff was owner in joint possession to the extent of 1/3rd share out of 1/2 share of total suit land. Respondent/defendants filed a written statement taking preliminary objections that suit of plaintiff was not maintainable. Petitioner filed an application for service of Special Kanungo to prepare the excerpt and to furnish the information regarding nature of suit land on the

ground that information was required from the Special Kanungo by way of excerpt for proving that the suit land was ancestral and coparcenary property.

2.2. Defendants No.1 and 2 (respondent Nos.1 & 2 herein) filed reply taking objections therein that the application was not maintainable at this stage and was liable to be dismissed. It was further stated that the said application was nothing but was abuse of due process of law and no such application could be filed to bring on record such evidence. Defendant/Respondents No.3 to 5 filed their separate reply taking objections therein that the said application was not maintainable in the present form as plaintiff was supposed to lead evidence in affirmative at the time of plaintiff's evidence.

2.3. By way of impugned order, Ld. Trial Court dismissed the said application by holding that application was filed at a fag end of the case and the case pertained to the year 2012. Further it was held that both the parties led their evidence by availing ample opportunities within the span of 10 years.

3. I have heard learned counsel for petitioner and gone through the record.

4. Impugned order is premised, *inter alia*, on the following reasoning:

“3. I have heard the Ld. counsel for both the parties and have perused the judicial record carefully. Perusal of the file reveals that by way of moving this application the applicant seeking the help of the court to direct the special Kanungo to prepare the excerpt. In the present case the plaintiff has closed his evidence on 29.4.2019. The defendants have closed their evidence on

dt.10.11.2022 and there-after the case was fixed for rebuttal evidence and now when the case is fixed for rebuttal evidence or for arguments the plaintiff has moved this application at the fag end of the case. The case is old one pertaining to the year 2012. Both the parties have already led their evidence by availing ample opportunities in the span of 10 years. So, at this stage, I do not find any merits in the present application and same stands dismissed. Now to come up on 13.02.2023 for rebuttal evidence if any or for final arguments subject to last chance.”

5. Having heard the arguments of learned counsel for petitioner, I am of the opinion that there is no room for interference in the aforesaid valid reasons recorded by Ld. Trial Court.

6. There is no explanation as to why the application for direction to the Kanungo for preparation and production of excerpt was not moved when the petitioner led his affirmative evidence and before closing it on 29.04.2019. From the perusal of impugned order which is self-explanatory, it is borne out that apart from reasons already recorded by Ld. Trial Court, given the nature of suit i.e. declaration to the effect that plaintiff/petitioner was owner to the extent of 1/3rd out of 1/2 share in the suit property claiming the same to be ancestral and coparcenary, the services of Kanungo, which were sought to be availed through the belated application, are of no consequence. It is the affirmative case pleaded by petitioner in the plaint that her father and defendant No.2 (respondent No.2 herein) inherited the suit property from their forefathers and the same was ancestral. The onus of proving the suit land being ancestral was thus on the plaintiff and *qua* which she has already led her evidence both oral as well as documentary. She cannot now be allowed to fill up lacunae or deficiency in her case at this belated stage, more so in the absence of any explanation for failure to seek

production of excerpt at proper stage. Her oral as well as documentary evidence are already on record and Ld. Trial Court can draw the necessary conclusion from the same without revenue excerpt or any assistance of Kanungo.

7. No material irregularity in law or procedure has been committed by Ld. Trial Court, so as to exercise extraordinary revisional jurisdiction.

8. In view of the aforesaid, nothing survives for adjudication before this Court. Revision petition is dismissed being devoid of merit.

9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 03, 2023
ashish

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