

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

Sr. No.112

CR-2417-2023 (O&M)

Date of Decision: 16.05.2023

Upinder Singh and another

...Petitioners

Versus

Hardeep Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Namit Gautam, Advocate
for the petitioners.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside common order dated 10.04.2023 (Annexure P-10), passed by Ld. Addl. Civil Judge (Sr. Division), Ludhiana, whereby the application filed by plaintiffs for closure of evidence of defendants by order, was dismissed and another application filed by defendants seeking permission to get the file inspected and to take photographs by Handwriting and Fingerprint Expert, was allowed.

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

2.1. Petitioner/plaintiffs filed a suit against respondents for issuance of decree of declaration to the effect that alleged transfer deed bearing Vasika No.7271 dated 25.06.2008 allegedly executed by Late Sh. Nirmal Singh S/o Gurmukh Singh in favour of respondent/defendant No.1 pertaining to property measuring 326 square yards, comprising in Khasra No.5734/643, 5735/643, 5740/643, 5741/643, Khata No.353/383, 354/185 as per jamabandi for the year 2000-2001, situated at Village Gill-II, Hadbast No.263, Tehsil and District

Ludhiana (abadi known as Guru Angad Colony) is null and void, *ab initio* as the same was never executed by Late Sh. Nirmal Singh and the same is the result of fraud, forgery, misrepresentation and the same has been got executed in order to defeat the valuable rights of plaintiffs and the same is not binding on the rights of plaintiffs.

2.2. Plaintiffs further sought declaration to the effect that Mutation No.70203 and 86254 got sanctioned by respondent/defendant No.1 in his favour on the basis of the above said alleged transfer deed is illegal, null and void, *ab initio* and is not binding on the legal rights of plaintiffs *qua* the suit property and is liable to be set aside.

2.3. Plaintiffs also sought declaration to the effect that the pedigree dated 24.06.2008 issued by Harbhajan Singh Kang, Councillor, Municipal Corporation, Ludhiana is totally wrong, illegally, null and *void ab initio* and is liable to be set aside.

2.4. Plaintiffs also sought declaration to the extent that the plaintiffs are the joint owners of the above said land/property to the extent of 1/7th share being the legal heirs of Late Sh. Indermohan Singh s/o Nirmal Singh.

2.5. Plaintiffs further sought grant of decree of permanent injunction restraining defendant no.1 himself, his attorney, agents, associates, etc. from alienating, mortgaging, transferring, gifting, selling, creating any charge, pleading the above said property in favour of any person, except in due course of law on the basis of oral and documentary evidence.

2.6. Upon notice, respondent/defendants No.1 and 2 filed their separate written statement taking therein preliminary objections.

2.7. Thereafter, application for amendment of plaint was filed, which was allowed vide order dated 26.08.2022 and written statement to amended plaint was filed. However, vide order dated 09.11.2022, it was clarified by Ld. Trial Court that only three effective opportunities will be granted to both the parties to conclude the evidence because the matter pertains to the year 2011.

2.8. On 21.03.2023, plaintiffs moved application (Annexure P-5) for closing the evidence of defendants by order and to not grant any further adjournment or opportunity for introducing any new witness on the ground that they have already availed more than maximum opportunities and defendants are only delaying the proceedings by not completing the evidence.

2.9. On 27.03.2023, defendants moved an application for permitting handwriting expert to inspect the file. On 29.03.2023, plaintiffs moved application (Annexure P-7) for the supply of copies of documents mentioned in the application for inspection of file and for taking photographs by handwriting and fingerprint expert for the purpose of filing reply to the same. On 03.04.2023, some documents were supplied by defendants. However, no reply to the application for closing evidence of defendants was filed. On 05.04.2023, reply (Annexure P-8) was filed to the application moved by defendants seeking permission to get the file inspected from handwriting expert. However, no reply was filed by defendants to the application moved by plaintiff seeking closing of evidence of defendants by order. Thereafter, on 06.04.2023, the plaintiffs moved another application (Annexure P-9) seeking direction to defendants to file reply to the application dated 21.03.2023 moved by plaintiffs for closure of evidence of defendants and to decide both applications i.e. application moved

by defendants for examination of file by handwriting expert and application moved by plaintiffs seeking closure of evidence of defendants together.

2.9. Vide impugned order, the Ld. Trial Court dismissed the application filed by plaintiffs for closure of evidence of defendants and allowed the application filed by defendants for inspection and for taking of photographs by handwriting and fingerprint expert.

3. Learned counsel for petitioners would *inter alia* argue that plaintiffs' evidence was concluded within time frame given by Ld. Trial Court. However, defendants availed many opportunities for leading their evidence. Thus, no further opportunity could be granted to them. Therefore, by allowing the application for inspection and for taking of photographs by handwriting and fingerprint expert, the Ld. Trial Court reviewed its own order of time frame.

4. I have heard learned counsel for petitioners and gone through the record.

5. Impugned order dated 10.04.2023 (Annexure P-1) passed by learned Additional Civil Judge (Sr. Divn.), Ludhiana, is premised, *inter alia*, on the following reasoning:

“xxxx xxxx xxxx xxxx

After hearing assertions of Learned counsel for applicants/ plaintiffs, I have minutely analysed the record and it has emerged that application in hand is nothing, but another attempt of plaintiffs to sensationalise the matter and delay the trial of the case. In order to view the matter from a correct perspective, it would be apposite to refer to the proceedings of the case as recorded in the zimni orders of the case in hand. The case in hand was filed way back on 26.09.2011. Presence of all the defendants could not be procured till 31.05.2018 on account of callous attitude of applicant/plaintiff towards the proceedings of the case. Ultimately finding no other option, my learned Predecessor

dismissed the suit against defendant no.3 (iii) U/O 9 Rule 2 CPC for want of Munadi Charges. Thereafter, applicant/plaintiff moved an application for recalling the order dated 31.05.2018, which was allowed and notice was again issued to defendant no.3 (iii) by way of Munadi and affixation and the case was fixed for plaintiffs' evidence. Besides the time elapsed during the imposition of lockdown on account of outbreak of Covid-19 Pandemic, applicant/plaintiff availed 13 effective opportunities for the purpose of adducing evidence. Despite having availed 13 effective opportunities, applicant/plaintiff did not examine any other witness except from himself stepping into witness box. Besides this, on request of learned counsel for applicant/plaintiff, the matter was even sent to Mediation Centre for the purpose of amicable settlement between the parties, but to no avail. After having availed a time period of three years and 13 effective opportunities, on 17.05.2022, applicant/plaintiff moved an application thereby seeking amendment of plaint, which was allowed vide order dated 26.08.2022 and the matter was fixed for filing amended plaint. On 01.09.2022, again none turned up on behalf of applicant plaintiff, yet keeping in view the larger interest of justice, the matter was fed for awaiting the applicant/plaintiff instead of passing any adverse order. Thereafter, again applicant/plaint moved an application under Section 66 of Evidence Act, thereby seeking direction to respondents/defendants to produce some documents, which was allowed and applicant/plaintiff again, tendered his afresh evidence after amendment of pleadings on 24.11.2022. Thereafter, again the plaintiff was partly cross-examined on a number of dates but he did not examine any other witness. Lastly after completion of his own cross-examination on 14.12.2022, applicant/plaintiff examined handwriting and finger print expert on 15.12.2022 and closed his evidence. Thus it is apparently clear that applicant/plaintiff has availed more than 20 effective opportunities during the time span of approximately four years for the purpose of conclusion of his evidence.

On the contrary, when the case was fixed for evidence of defendant, he examined his witness Hardeep Singh and witness Budh Singh on two consecutive dates of hearing that is on 17 December, 2022 and 19th December, 2022. However, plaintiff did not conclude the cross- examination of witness Hardeep Singh and his cross-examination was deferred on request of learned counsel for plaintiff on 19th December, 2022. Thereafter the matter remained pending from 20th December, 2022 till 3rd March, 2023, since plaintiff kept on asserting that he intended to get the matter transferred from this court and for that

purpose he had moved the transfer application before the court of learned District Judge. On 3 March, 2023, both the parties submitted before this court that transfer application moved by plaintiff had been dismissed. Witness Hardeep Singh and Budh Singh remained present for facing cross examination on 3 March, 2023 also, but again learned counsel for the plaintiff submitted that he intended to move revision petition before Hon'ble Punjab and Haryana High Court against the orders passed by learned District Judge, thereby dismissing the transfer application. Thus an opportunity was extended to the plaintiff to get transfer orders from the Hon'ble High Court and the matter was adjourned to 15 March, 2023. Again on 15 March, 2023 witness Hardeep Singh remained present for facing cross-examination, but again learned counsel for plaintiffs sought adjournment while pleading that he would conduct the cross-examination of witness Hardeep Singh on the very next date. Thus acceding to the request of learned counsel for plaintiff the matter was adjourned to 16 March, 2023. On 16 March, 2023, witness Hardeep Singh (DW1) and Budh Singh (DW2) again remained present in the court for facing cross- examination. But only witness Hardeep Singh (DW1) was cross-examined by learned counsel for plaintiff and cross-examination of witness Budh Singh was deferred on request of learned counsel for plaintiff. On 20 March, 2023 witness Budh Singh could not turn up in the court since he suffered a fracture on his knee. Resultantly, the case was adjourned to 21st March, 2023 for evidence of defendants when the application for getting the file examined from Handwriting and Fingerprint Expert was moved by defendants. Needless to add that aforesaid application has been decided by the court today. In the meanwhile, witness Budh Singh and witness Puneet Singh have been examined by defendants. Thus aforesaid facts clearly establish that defendants has been given not more than three opportunities for the purpose of leading evidence. On the other hand, plaintiff has not been leaving any stone unturned to cause delay in the present case.

Taking into account, the factual matrix detailed herein above, no grounds are made out for closing the evidence of defendants. Rather the application in hand appears to be mischievous, frivolous and vexatious in nature. Thus application in hand is hereby dismissed.

For evidence of defendants, the case stands adjourned to 15 March, 2023.”

6. I am inclined to agree with the wholesome view taken by Ld. Trial Court which is supported by sound and sufficient reasons.
7. There is no room for interference in the aforesaid valid reasons recorded by Ld. Court. The petitioners themselves took 4 years and availed 20 effective opportunities to adduce their evidence. I see no grounds to interfere.
8. Dismissed.
9. Pending application(s), if any, shall also stand disposed of.

May 16, 2023
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Whether speaking/reasoned:

Whether reportable:

(ARUN MONGA)
JUDGE

Yes/No

Yes/No