

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

**Civil Revision No. 3708 of 2019 (O&M)
Date of Decision: 23.11.2023**

Bhagat Singh & Ors.

...Petitioners

Versus

Sewa Singh & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Amit Kumar Saini, Advocate
for the petitioners.**

**Mr. S.S. Rangi, Advocate
For the respondent No.1.**

**Mr. Abhay Gupta, Advocate
For respondents No.5 and 7.**

KARAMJIT SINGH, J.

1. Petitioners/ defendants being aggrieved by order dated 04.05.2019 (Annexure P-9) passed by the Court of Civil Judge (Jr.Divn.), Samrala, have filed the present civil revision petition.

2. The brief facts of the case are that respondent No.1 Sewa Singh filed suit for declaration, joint possession and permanent injunction with regard to the suit property on the ground that the suit land is joint Hindu family coparcenery ancestral property in the hands of his father Joginder Singh wherein respondent No.1 was having right by birth and challenge was also laid to gift deed dated 11.06.2014 registered on 12.06.2014 executed by Joginder Singh in favour of defendants No.2 and 3. The suit has been contested by the defendants who denied the ancestral nature of the suit property. The learned trial Court framed issues and then the case was fixed for recording of evidence. When the case was at its final stage, respondent

No.1 filed an application for additional evidence to produce certain documents in order to prove the ancestral nature of the suit property. The said application was allowed by the trial Court vide order dated 08.12.2018 and consequently respondent No.1 tendered certain revenue record by way of additional evidence. Thereafter, the contesting defendants tendered affidavits of DW.6. Bhagat Singh, DW.7 Manjit Singh, DW.8 Mohender Singh and DW.9 Parmod Kumar as their examination-in-chief in rebuttal to the aforesaid additional evidence, to which the other party raised objection. The application/ objections filed in this regard by respondent No.1 were allowed vide impugned order (Annexure P-9) and the trial Court gave directions that affidavits of DW.6 to DW.9 are to be discarded.

3. Being aggrieved, the petitioners have filed the present revision petition.

4. I have heard the counsel for the parties.

5. During arguments, the counsel for the petitioners submits that he is not to examine any oral witness and will produce only certified copy of judgment and decree dated 16.09.2002 passed in civil suit no. 192 of 1998, certified copy of will dated 15.03.1986 (exhibited in civil suit No. 192) executed by Maghi Singh in favour of his son Joginder Singh, certified copy of *vasika* register having entry dated 15.03.1986 with regard to aforesaid will and certified copy of mutation No. 1721 by way of rebuttal to additional evidence already led by respondent No.1. The counsel for the petitioner further submits that the impugned order whereby learned trial Court discarded affidavits of DW.6 to DW.9 could be kept intact to that extent, with liberty to the petitioner to produce the aforesaid documents in his rebuttal evidence.

6. The counsel appearing on behalf of the contesting respondents while supporting the impugned order, *inter alia*, contends that there is no illegality or infirmity in the said order. It is further submitted that the certified copies of the documents which the petitioner intends to produce in rebuttal to the additional evidence, are beyond pleadings and thus cannot be taken into consideration. So, prayer is made that the present petition be dismissed.

7. I have considered the submissions made by counsel for the parties.

8. From the perusal of the record it appears that respondent No.1 in order to prove the ancestral nature of the suit property has tendered certain documents by way of additional evidence. The plea of the petitioners is that the suit property is non-ancestral being bequeathed by way of will dated 15.03.1986 and that in order to establish this fact petitioners intends to produce certified copy of the said will along with that of judgment and decree dated 16.09.2002 whereby the validity of said will is stated to have been upheld and entry of the register of concerned document writer and mutation No.1721 to rebut the aforesaid additional evidence, the same being necessary for the proper adjudication of the suit. This Court is of the view that the petitioners could not be disallowed to produce the aforesaid documents by way of rebuttal to the additional evidence just on the ground that there is objection from the other side that the said documents are beyond pleadings. Even otherwise, any such objection if raised before the trial Court will be taken up and considered at appropriate stage by the said Court.

9. In light of the above, without commenting on the merits of the case, the present petition is hereby disposed of while maintaining the impugned order to the extent whereby affidavits of DW.6 to DW.9 have

been discarded, with liberty to the petitioners to tender certified copy of judgment and decree dated 16.09.2002 passed in civil suit no. 192 of 1998, certified copy of will dated 15.03.1986 executed by Maghi Singh in favour of his son Joginder Singh, certified copy of *vasika* register having entry dated 15.03.1986 with regard to aforesaid will and certified copy of mutation No. 1721, by way of rebuttal to additional evidence already led by respondent No.1.

10. The revision petition stands disposed of in above terms.

(KARAMJIT SINGH)
JUDGE

23.11.2023

Jiten

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