

Citation No.2023:PHHC:119101
IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 3201 of 2022 (O&M)
Date of decision : 11.9.2023

...

Varinder Singh @ Harpreet Singh

.....Petitioner

vs.

Gurmeet Kaur and others

.....Respondents

CORAM : HON'BLE MR JUSTICE SANJAY VASHISTH

Present: Mr. Harminder Singh, Advocate
for the petitioner.

Mr. Arun Abrol, Advocate
for respondents No. 1 to 4.

...

SANJAY VASHISTH, J. (Oral)

1. The present revision petition has been filed by petitioner-plaintiff, challenging the order dated 01.11.2019, vide which application under Order 14 Rule 5 of Civil Procedure Code, moved by the plaintiff was dismissed. Without challenging the order dated 1.11.2019, the petitioner -plaintiff, filed another application under Order 14 Rule 5 of Civil Procedure Code and the same was also dismissed vide order dated 06.12.2019. Thus, the same is also challenged before this Court by way of filing the present revision petition.

2. For understanding the facts in brief, it is submitted that

the petitioner being plaintiff in the suit, is seeking a declaratory decree being a co-sharer, co-owner in joint possession of $\frac{1}{2}$ share of the suit land as detailed in the Head Note A and B of the plaint. A copy of the plaint, which is appended with the present petition is perused alongwith the Head Note thereof. The same is reproduced here below:-

“Suit for declaration to the effect that the plaintiff is the co- sharer, co-owner in joint possession of the suit properties fully detailed and described in the schedule given below:-

(A) 1/8 share of land measuring 75 Kls9 Mls. bearing nokhasras 13R/15,16,14R/11, 12, 20, 24R/16/2, 25R/21/2/1, 29R/1, 2/1, 2/3, 3/2/2, 8/1, 9/1/2, 10/1, 13/2/2, 14/2/2, 14/3. 30R/5/1, 24R/25, Khewat No. 36, as entered in the jamabandi for the year 2011-12, situated at Village Aliwal Arraian, Had Bust No. 270, Tehsil Batala.

(B) 1/8 share of land measuring 27 Kls. 2 Mls., bearing Khasra No. 42R/12/3, 13, 18 min pahar, 18 min dakhan19, 20/2, 42R/12/2, 42R/12/1, bearing khewat no. 80, 218, 398 as entered in the jamabandi for the year 2009-10, situated at Village Talwandi Bharath, Tehsil Batala.

(C) 1/4 share of house property built over an area of around 13 Mls., bounded as North-Property of Sukhwant Singh, Harjinder SinghSouth- Raasta, East-

Property of Avtar Singh and Raasta, West- Raasta and property of Jagjit Singh, Fauji, situated in Village Abbadi Village Aliwal Arraian, Tehsil Batala, shown as pink and worded as ABC D in the plan attached, along with the tube well bores, tube well electric connections, tube well Kothas, and all other installations, fixtures installed thereupon, and that the defendants no. 1 to 4, had have got absolutely no right, title and interest with the suit properties above stated, except their 3/8 share in the joint properties as detailed at Head Note "A" and "B", above stated, and 3/4 in house property as detailed at Head Note "C", having been inherited by them from Late Smt. Dalbir Kaur, and the alleged judgment and decree dt. 31.7.14, delivered by the Court of Ms. Etu Sodhi, Civil Judge, Batala, in the Civil Suit No. 234 of 26.5.2003, case titled Varinder Singh Vs. Dalbir Kaur Etc., alleged to have been filed by defendant no. 5, in the capacity of the next friend of the plaintiff against Dalbir Kaur, (now deceased), whereby the said suit was dismissed and the entire proceedings in respect thereof were/are absolutely not binding upon the plaintiff due to the fact of the same being an outcome of gross negligence, shown by the next friend in conductance of the case and being a result of fraud, collusion and conspiracy of defendant no. 5, with the other defendants and for

that matter Late Dalbir Kaur, and being illegal, invalid, inoperative, ineffective, unauthorized, ultra vires, collusive, null and void, a nullity in the eye of law, and an outcome of fraud and misrepresentation played by the defendants inter-se, not only as against the rights of the plaintiff, but upon the Hon'ble Court as well, and was/is absolutely not binding, and liable to be declared so and liable to be set aside.

OR

In the alternative suit for Joint possession of the properties in the form of lands as mentioned above at Head Notes "A" & "B", along with declaration as sought for above.

AND

Suit for separate possession by partition by metes and bounds of the property in the form of Gair Mumkan house situated at Village Abbadi Village Aliwal Arraian, Tehsil Batala, as detailed at Head Note "C", in the heading of the plaint."

3. The prayer clause of the plaint in paragraph No. 41 is also reproduced here below :-

"41. That the plaintiff prayer that a decree for declaration and for separate possession by way of partition as prayed for in the heading of the plaint, regarding the property fully detailed and described at heat note "C" in the heading of the plaint or in the

alternative for joint possession with declaration as sought for be granted with costs in favour of the plaintiff and against the defendants. And any other relief to which the plaintiff may be legally and equitably found entitled may also be granted in favour of the plaintiff and against the defendants.”

4. Considering the pleadings of the parties, learned trial Court framed total 10 issues vide its order dated 29.11.2016. The same are also reproduced here below :-

- (i) *Whether the plaintiff is entitled to the decree of Declaration on the basis of facts as alleged? OPP*
- (ii) *Whether in alternative, plaintiff is entitled to joint possession on the basis of facts as alleged? OPP*
- (iii) *Whether the plaintiff is entitled to separate possession by partition by metes and bounds? OPP*
- (iv) *Whether the suit is maintainable? OPP*
- (v) *Whether the plaintiff has not come to the court with clean hands and concealed the material facts, if so, its effect? OPD*
- (vi) *Whether the suit is barred under order 2 Rule 2 CPC? OPD*
- (vii) *Whether the plaintiff has got no locus standi to file the present suit? OPD*
- (viii) *Whether the plaintiff is estopped by his own act and conduct to file the present suit against the defendants? OPD*
- (ix) *Whether the suit is barred by the Principle of resjudicata, as alleged? OPD*
- (x) *Relief.*

5. At the stage of the trial, when evidence of defendants No. 1 to 4 had been closed and the trial of the suit was fixed for leading evidence by defendants No. 5 and 6 only and also for rebuttal, the plaintiff moved an application dated 01.10.2019 under Order 14 Rule 5 of Civil Procedure Code for framing of additional

issue. In the application, the plaintiff himself stated that the suit has been filed by him claiming that *he is owner/co-sharer in possession of the suit property having been inherited from Sh. Mang Jit Singh s/o Virsa Singh, his biological father, on the complete and detailed facts, as submitted in the plaint.* It is also pleaded in the application that *whereas the defendants have denied the right of the plaintiff and as part from that the defendants No. 1 to 3, have alleged that the plaintiff is not the son of Mang Jit Singh s/o Virsa Singh, on the detailed facts as submitted in the written statement, which may please be read.*

6. Accordingly, the plaintiff through his application proposed to frame the following issue :-

Proposed Issue

I) Whether the plaintiff is **not** the son of Mang Jit Singh s/o Virsa Singh as alleged? OPD

7. Application dated 01.10.2019, moved by the petitioner -plaintiff under Order 14 Rule 5 of Civil Procedure Code was dismissed by the trial Court vide impugned order dated 01.11.2019.

For convenience, the order is reproduced hereunder :-

“1. Heard on an application under order 14 Rule 5 of CPC read with Section 151 of CPC filed by plaintiff.

2. The plaintiff applicant has averred in the present application that plaintiff has filed the present suit on the allegations that he is owner/co-sharer in possession of the suit property having been

inherited from Sh. Mangjit Singh son of Virsa Singh, his biological father, on the complete and detailed facts as submitted in the plaint, whereas the defendants have denied the right of the plaintiff and apart from that the defendants No1 to 3 have alleged that the plaintiff is not the son of Mangjit Singh son of Virsa Singh as detailed in the written statement. It is further stated in the application that this material issue, which arise from the pleadings of the parties is required to be framed for complete and effective adjudication of the case

Proposed issue No. 1:-

Whether the plaintiff is not the son of Mangjit Singh son of Virsa Singh as alleged? OPR

It is therefore prayed that the issue as stated above may kindly be framed

3. The defendants No.1 to 4 have contested the application by filing reply to the same in which it is mentioned that application of the plaintiff is not maintainable at this stage as the plaintiff and the defendants have already closed their evidence. It is further mentioned that needless to add that the said proposed additional issue has already decided by the Hon'ble court in the previous suit as mentioned in the written statement, hence the application of the plaintiff does not lie and the same is liable to be

dismissed. The remaining contents of the application have been denied and lastly dismissal of the application has been prayed for.

4. I have heard learned counsel for both the parties and have gone through the file carefully

5. By way of present application, the plaintiff/applicant has sought the framing of additional issue as mentioned above. Perusal of the file reveals that present suit has been filed by plaintiff for declaration, joint possession and separate possession and issues in this regard were already framed on 29.11.2016 which are comprehensive and is wide enough to cover the issue sought by the plaintiff/applicant to be framed. To decide the present suit, the additional issue the plaintiff wants to be framed is not required. Moreover on 24.09.2019 learned counsel for defendant no.1 to 4 has already closed their evidence and case was fixed for 01.10.2019 for remaining evidence of behalf of defendant no.6, when the application in hand was filed. The additional issue as claimed by the plaintiff is not required for proper adjudication of the present case as the same is unnecessary. Therefore, I do not deem it necessary to frame the additional issue sought by plaintiff applicant in the present

application.

6. Thus in view of forgoing discussion the present application is dismissed. Now to come up on 15.11.2019 for remaining evidence of the defendant No.6 at own responsibility, subject to last opportunity.”

8. Without there being any challenge to the said order by the plaintiff and without there being any change in the circumstances, plaintiff again made an attempt, to propose the framing of following two issues vide another application dated 20.11.2019 (Annexure P-7). The proposed additional two issues are reproduced below:-

Proposed Issue

- I) Whether the plaintiff was adopted by Lakhwinder Singh vide Registered Adoption deed dated 31.7.2007, as alleged.? OPP
- II) Whether the plaintiff is not the son of Mang Jit Singh son of Virsa Singh as alleged? OPD

9. The said application was also dismissed by the trial Court vide impugned order dated 06.12.2019 and for convenience, the said order is also reproduced here below:-

“ Heard on application under order 14 Rule 5 of CPC read with Section 151 of CPC, filed by plaintiff/applicant.

Reply to the application filed by the defendant No. 1 to 4 wherein it is mentioned that earlier the

plaintiff had given same application on the same matter in dispute before the court and the same was dismissed by the court and the second application does not lie. It is further mentioned that that application of the plaintiff is not maintainable at this stage as the plaintiff and the defendants have already closed their evidence. It is further mentioned that needless to add that the said proposed additional issues have already decided by the Hon'ble court in the previous suit as mentioned in the written statement, hence the application of the plaintiff does not lie and the same is liable to be dismissed. The remaining contents of the application have been denied and lastly dismissal of the application has been prayed for.

Further, Ld. Counsel for defendant No. 6 also suffered a statement that he has no objection if the application dated 20.11.2019 under Order 14, Rule 5 CPC filed by the plaintiff be allowed.

Considered. By way of present application under Order 14 Rule 5 of CPC, the plaintiff/applicant has sought the framing of additional issues. Perusal of the file reveals that earlier also the applicant had moved an application under Order 14 Rule 5 of CPC read with Section 151 CPC on the same grounds which was disposed off vide detailed order dated 01.11.2019. Thus, the second application on same grounds is not

maintainable. Accordingly, in view of order dated 01.11.2019 the present application in hand is dismissed. Now to come up on 16.12.2019 for remaining evidence of the defendant No.6 at own responsibility, subject to last opportunity.”

10. While relying upon the judgment, **Gaurav Goel v. Ramji Dass (Punjab and Haryana) 2018 (1) PLR 131**, counsel for the petitioner submits that in fact, additional issue is proposed by the plaintiff to put the onus upon the defendants to prove that the plaintiff is not the son of Mang Jit Singh. (However, counsel for the petitioner submits that he means to say that onus to prove the said issue should be upon him i.e. plaintiff only).

11. This Court is unable to understand even the prayer made by the petitioner-plaintiff. Otherwise also, applying mind to the application moved by the plaintiff before the trial Court, this Court is of the view that taking note of the pleadings raised in the plaint, already the trial Court framed issues on 29.11.2016, wherein specifically Issue No.1, is as mentioned here below :-

(i) Whether the plaintiff is entitled to the decree of Declaration on the basis of facts as alleged? OPP

12. The trial Court has already applied its mind and has given an observation in regard to the proposed issue by saying that the issues framed by the Court on 29.11.2016 are itself comprehensive and wide enough to cover the issue sought by the plaintiff/applicant to be framed. To the mind of this Court also, what is being proposed by the petitioner-plaintiff-applicant, is of no

relevance as the onus is already upon the applicant, to prove his right over the property in question, by producing evidence that he is son of Mang Jit Singh s/o Virsa Singh and said part of issue is framed under Issue No.1 itself.

13. Moreover, issue proposed by the petitioner-plaintiff-applicant, is not a correct proposition, for the reason that he wishes to frame an additional issue to put onus upon the other side i.e. defendants to produce an evidence for proving a negative fact. **Obviously, there can't be any evidence in the negative form to prove a non-existing fact.** For that purpose, paragraph No. 5 of the judgment of a Co-ordinate Bench of this Court, in **Gaurav Goel's case (Supra)**, and as relied upon by the petitioner-plaintiff himself, would be directly applicable. Counsel for the petitioner also relies upon the judgment **Chanan Singh vs. Sant Singh and others, Law Finder DocId # 2101906**, and points out paragraphs No. 9 and 10 of the same.

14. After going through both the judgments, I am also of the same view about the proposition of law, as has been discussed and held in the said judgments. However, the same are not applicable to the proposition put forward by the plaintiff-applicant. Rather, the observations made in the cited judgments are averse to the submissions addressed by the petitioner herein and more in the support of the case of the defendants and also confirms the view point of the trial Judge.

Even the second impugned order dated 06.12.2019 does not suffer from any illegality, simply for the reason that petitioner-

plaintiff-applicant had not challenged the first order dated 01.11.2019, prior to the moving of the second application.

15. It is also worth noticing, that counsel for the respondent has accepted very graciously that the proposed issue need not to be framed, as it would only lead to wastage of precious time of the Court, because the issues already framed are comprehensive enough to cover purpose of deciding the contentions as addressed by the counsel for the petitioner, by projecting the proposed issues. Further submits that he won't object to consider the said part of the contentions of the plaintiff, if the same is addressed with the help of evidence already lead before the Court.

Considering all the circumstances and the reasoning given in the impugned order(s) and submissions addressed before this Court, I do not find any reason to accept the proposition addressed by the petitioner-plaintiff-applicant. Same are devoid of any merit and are resulting only in total wastage of time, firstly of the trial Court and now of this Court.

16. Thus, the present petition stands dismissed with an exemplary cost of Rs.10,000/-.

(**SANJAY VASHISTH**)
JUDGE

11.9.2023
chugh

Whether speaking / reasoned Yes / No

Whether reportable Yes / No