

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

**Civil Revision No. 5236 of 2023(O&M)
Date of Decision: 31.10.2023**

Gulzar Singh & Ors.

...**Petitioners**

Versus

Gurpreet Singh & Ors.

...**Respondents**

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. I.S. Brar, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

CM-17893-CII of 2023

The copy of the issues framed by the trial Court is taken on record. CM stands disposed of accordingly.

CR-5236 of 2023

1. The present petition has been filed by the petitioners/ defendants for modifying the impugned order dated 02.08.2023 (Annexure P-5) passed by the Court of Additional Civil Judge (Sr.Divn.), Bathinda vide which an application filed under Order 14 Rule 5 CPC by the petitioners for framing of additional issues has been partly allowed.

2. The brief facts of the case are that respondent No.1/ plaintiff filed suit for possession of the suit property against petitioner No.1 Gulzar Singh wherein it has been alleged that the suit property was owned by Sarwan Singh son of Natha Singh and that respondent No.1 is adopted son

of said Sarwan Singh and on the death of Sarwan Singh, respondent No.1

has become owner of the suit property and thus is entitled to get its possession as the same is illegally occupied by defendant. The suit is being contested by the defendant/ petitioner No.1 who has alleged in the written statement that the suit property was purchased by his predecessor-in-interest namely Harnam Singh son of Thakar Singh from aforesaid Sarwan Singh on 21.06.1962 for Rs.1300/- and in this regard entry was made in *bahi* in Urdu language by Hira Singh and Sarwan Singh signed the same in Punjabi language and Bhan Singh and Chetan Singh witnessed the execution of said document and that the defendant/ petitioner No.1 being successor-in-interest of aforesaid Harnam Singh is in lawful possession of the suit property being its owner. In the written statement the contesting defendant has denied the fact that respondent No.1 Gurpreet Singh is adopted son of aforesaid Sarwan Singh.

3. On the pleadings of the parties, the learned trial Court vide order dated 26.10.2018 framed the following issues

- “1. Whether the plaintiff is entitled to suit for possession as prayed for? OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 3. Whether the plaintiff is entitled for suit for recovery of Rs.1,70,000/- being the amount of mesne profit? OPP*
- 4. Whether the suit is within limitation? OPP*
- 5. Whether the suit of plaintiff is not maintainable in the present form? OPD*
- 6. Whether the plaintiff has no cause of action to file the present suit? OPD”*

4. Thereafter, the petitioner No.1 filed an application under Order 14 Rule 5 CPC for framing of issues with regard to adoption of respondent

No.1 and regarding execution of sale deed dated 21.06.1962. However, the learned trial Court declined to frame any such issue and rather framed the following additional issue:-

“6-A Whether the plaintiff is estopped from filing present suit by his own act and conduct? OPD”

Consequently the application filed by petitioner No.1 was partly allowed to the extent stated above.

5. I have heard the counsel for the petitioners.

6. From the perusal of the pleadings of the parties, it appears that petitioner No.1 has denied that respondent No.1 is adopted son of Sarwan Singh, while respondent No.1 has denied the execution of any sale transaction dated 21.06.1962 by Sarwan Singh in favour of Harnam Singh predecessor-in-interest of respondent No.1. In the given circumstances, this Court is of the view that the impugned order requires modification and issue No.1 is reframed as follows:-

“1. Whether the plaintiff Gurpreet Singh being adopted son of Sarwan Singh is entitled to get possession of the suit property? OPP”

7. Further, the following additional issue No. 6-B is also framed:-

“6-B Whether Sarwan Singh son of Natha Singh during his lifetime sold the suit property through bahi entry dated 21.06.1962 to Harnam Singh son of Thakar Singh, for valuable consideration? If so, its effect? OPD”

8. The revision petition stands disposed of in aforesaid terms and the trial Court should proceed with the trial.

9. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. If respondents are summoned to contest this litigation, they will have to incur huge expenses to defend this case. However, liberty is granted to the respondents that if they feel dissatisfied with this order, they may move an application to recall the same.

31.10.2023

Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No