

107.

2023:PHHC:166028

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

CR-6835-2023

Date of decision: 15.12.2023

Balwinder Kaur

.... Petitioner

Versus

Maninder Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ghulam Nabi Malik, Advocate, for the petitioner.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 05.09.2023 passed by learned Additional Civil Judge (Senior Division), Fatehgarh Sahib, whereby the application of the petitioner-defendant No.1 for framing additional issues has been dismissed.

2. The brief facts as culled out from the petition are that respondent No.1-Maninder Kaur, plaintiff (hereinafter called, “plaintiff”) filed a suit to the effect that she is the owner and in possession of the suit property, as mentioned in the head note of the plaint, and also sought for permanent injunction against petitioner-Balwinder Kaur, defendant No.1 (for short, “defendant No.1”). It was averred that plaintiff and Jatinder Singh were born to Surjit Kaur and Lal Singh. Surjit Kaur died in 1981 and after her death, Lal Singh remarried with defendant No.1. From the said wedlock, three

children were born, namely, Pritpal Singh, Satvir Singh and Kamaljit Kaur. Said Jatinder Singh was in exclusive possession and in joint possession of suit property as mentioned in the head note of the plaint. He died unmarried and issueless. His mother Surjit Kaur died prior to him. After the death of Jatinder Singh, his properties were to be inherited by the plaintiff being his sister and only legal heir, but defendant No.1 i.e. his stepmother had fraudulently got mutated the property in her name.

2.1 Defendant No.1 filed reply stating that the suit was bad for non-joinder of necessary parties since the LRs of Jatinder Singh, who are his brothers and sister have not been impleaded as party. It has been submitted by defendant No.1 that Jatinder Singh was her real son. In the ration card, aadhar card, voter card and even in the death certificate of Jatinder Singh, her name has been mentioned. Due to the services rendered to him, Jatinder Singh also executed a khangi Will in her favour on 23.11.2012. It has further been submitted that Lal Singh married with Surjit Kaur on 30.06.1970. Since Surjit Kaur was a cancer patient and this fact was not disclosed by her parents to Lal Singh, he remarried with defendant No.1 in September, 1972 and from said wedlock, Jatinder Singh, Pritpal Singh, Satvir Singh, Maninder Kaur (plaintiff) and Kamaljit Kaur were born. Being real mother of Jatinder Singh (since deceased), she is entitled to inherit his properties.

2.2 The evidence of parties was concluded and thereafter, the case was fixed for rebuttal evidence in March, 2023. However, at that stage, the plaintiff filed an application dated 24.03.2023 under Order 6 Rule 17 read with Section 151 CPC for amendment of plaint with the averment that she

came to know about the birth of Satbir Kaur @ Sony while recording the statement of PW4-Prince Kumar. The amendment sought reads as under:-

“It is pertinent to mention here that a daughter namely Satbir Kaur @ Sony was also born from the wedlock of said Lal Singh and Surjit Kaur on 23.10.1978 and she died after a few days from her birth. Nickname of above said Jatinder Singh was Mintu whereas nickname of above said Maninder Kaur plaintiff is Rano.”

2.3 Said application was replied to by the petitioner-defendant No.1 by contending that proposed amendment cannot be allowed at a belated stage i.e. after 6 years of filing the suit and these facts were well within the knowledge of the plaintiff since beginning. However, vide order dated 11.04.2023, said application was partly allowed qua the fact that Satbir Kaur was also born out of wedlock of Lal Singh and Surjit Kaur on 23.10.1978 and she died after few days of her birth. However, her prayer qua the nick names was declined.

2.4 The amended plaint was filed and reply thereto was also filed. Thereafter, petitioner-defendant No.1 filed application dated 04.08.2023 (Annexure P-8) for framing of additional issues, which read as under:-

- i) Whether Satbir Kaur died and if so on what date? OPP*
- ii) That in case the above said issue is not proved by the plaintiff, then the suit is bad for non-joinder of necessary party? OPD*
- iii) Whether the plaintiff has not filed the plaint as per order of amendment of the Hon'ble Court as the plaintiff added nick names of said Satbir Kaur and Jatinder Singh, if so its effect? OPD*

2.5 Vide order dated 05.09.2023, said application was dismissed. Aggrieved against the said order, petitioner has approached this Court by way of filing present revision petition.

3. Learned counsel for the petitioner has argued that the plaintiff has cleverly written more facts in the plaint than allowed to do so. Necessary parties have not been joined. The additional issues are required to be framed for the just decision of the case.

4. I have heard learned counsel for the petitioner and have gone through the paper book.

5. The plaintiff has filed the suit claiming inheritance on the basis of natural succession of Jatinder Singh, her brother, on the ground that they were born from the loins of Lal Singh and womb of Surjit Kaur. Surjit Kaur died in the year, 1981 and thereafter, Lal Singh remarried with defendant No.1-petitioner. Jatinder Singh was in exclusive possession of the suit property. He was unmarried and died issueless and his mother Surjit Kaur predeceased him and at the time of death of Jatinder Singh, he was not first class legal heir. The grievance of the plaintiff is that the petitioner-defendant No.1 had fraudulently got mutated the suit property in her name. The plaintiff sought amendment in the plaint by stating that a daughter, namely, Satbir Kaur was also born to them on 23.10.1978 as this fact was not in her knowledge at the time of filing suit. The court below held that birth and death of Satbir Kaur @ Sony had already come on record in evidence that said child died soon after her death. So, her death is not in dispute.

6. It is not the case that any real brother or sister is left out. The main contest is only with petitioner-defendant No.1 in whose name suit

property has been inherited. So, issues Nos.1 and 2 with regard to birth and death and date of death of Satbir Kaur @ Sony and non-joinder of necessary parties, are not necessary for the just decision of the case.

7. As regard the third issue that the plaintiff has not filed the plaint as per order of amendment as she has added the nick names of said Satbir Kaur and Jatinder Singh, the same cannot be read in pleadings until and unless it is not allowed by the Court. If any additional fact is pleaded which is not allowed by way of amendment, then same can be struck off from the pleadings by the court itself. As such, no such issue is required to framed.

8. In view of above discussion, this Court is of the view that the order passed by the trial Court is in accordance with law and no ground is made out to frame additional issues. The revision petition is without merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

December 15, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No