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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(274)

CR-861-2018

Date of decision: - 01.08.2024

Ibrahim

....Petitioner

Versus

Sakina and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Amit Jain, Advocate,
for the petitioner.Mr. Akshay Jindal, Advocate,
for the respondents.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 19.01.2018 (Annexure P-4) passed by the Additional Civil Judge (Sr. Division), Ferozepur Jhirka (Mewat), vide which the application filed by the petitioner for producing additional evidence has been dismissed.

2. The plaintiff had filed a civil suit with the following prayer: -

“That the plaintiff therefore prays that a decree of declaration to the effect that the mortgage deed in favour of the defendant No.2 executed by defendant No.1 in respect of the land detailed in para No.1 of the plaint is against custom and not binding upon the reversionary rights of the plaintiff and that the plaintiff is owner in possession of the suit land



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detailed in para No.1 of the plaint and the defendants have no right, title or interest of any kind in the same and revenue entries showing the defendant No.1 as owner in possession and the defendant No.2 as a mortgagee are illegal, null, void, nonest and the same is liable to be corrected in the name of the plaintiff and a decree for permanent injunction restraining the defendants from alienating/transferring the land detailed in para No.1 of the plaint to any person by way of sale, mortgage, gift, relinquishment deed or in any manner and also from creating charge or encumbrance over the same and also from adopting any heir by way of adoption may kindly be passed in favour of the plaintiff and against the defendant with costs of the suit.

A decree for declaration to this effect that the alleged adoption deed dated 16.12.2009 bearing document Serial No. 19 and subsequent revenue entries on the basis of alleged adoption deed are wrong, illegal, nonest against custom and is not binding upon the reversionary rights of the plaintiff may kindly be passed in favour of the plaintiff and against the defendant no.1 and 3 and a decree for permanent injunction restraining the defendant: No.1 and 3 from alienating the suit land be also passed in favour of the plaintiff and against the defendants.

Any other relief which this Hon'ble court thinks fit and proper may also be granted.”

3. The evidence of the petitioner was closed and the defendants had also led their evidence. At the stage of rebuttal evidence, an application dated 19.12.2017 (Annexure P-2) was filed for producing additional evidence. In the said application it was averred that a criminal case bearing No.230/2013 under Sections 406 and 498-A IPC was

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registered at Police Station Kaman, District Bharatpur by one Sajida, who in the application was stated to be daughter of Sakina (defendant No.1/respondent No.1) and it was averred that the statements of the brothers of Sakina, namely, Jamati and Subrati, and other witnesses were recorded during the course of investigation of the criminal case and defendant No.1-Sakina at the time of cross examination had admitted about the registration of the criminal case but had denied the statements of her brothers in the criminal case. It has further been averred that Subrati, brother of Sakina, has also been examined in the criminal case as DW-3 but the statement recorded in the criminal case could not be put to the said DW-3. On the basis of said averments, it was prayed that the petitioner/plaintiff be permitted to produce certified copy of statements of Sakina, Sajida, Jamati, Subrati and Ilyas, which were recorded during the course of investigation in the said criminal case, as additional evidence by summoning the concerned clerk of the Court of JMIC, Kaman, with the case file. Reply to the said application was filed, in which, apart from the other objections, it was stated that the said statements which had been recorded under Section 161 Cr.P.C. by the investigation officer had no legal value and was not substantive evidence and could only be used for the purpose of contradiction in the said criminal case. It was further averred that the alleged statements had no effect on the rights of the answering defendants and they were not bound by the same. In addition to above, it was stated that the application for additional evidence was not maintainable and the evidence sought to be produced was beyond

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pleadings and moreover, several opportunities were granted to the applicant/plaintiff to lead his evidence and he had already led his evidence in the case and had closed his evidence by making a statement before the Court. It was averred that the applicant/plaintiff had not exercised due diligence at the time of leading the evidence and the application was filed just to delay the proceedings.

4. The Additional Civil Judge (Sr. Division), Ferozepur Jhirka (Mewat), vide order dated 19.01.2018 (Annexure P-4), dismissed the said application dated 19.12.2017 (Annexure P-2) and had observed that it was well settled law that the statements recorded under Section 161 CrPC during the course of investigation were not substantive piece of evidence and Section 162 CrPC provides that the statements of witnesses recorded under Section 161 CrPC could only be used for the purpose of contradiction in the criminal case and could not be used for the purpose of corroboration. Furthermore, it was observed that the statements under Section 161 CrPC could be used by the prosecution or the defence for the purpose of contradiction only in a criminal case and thus, the statements of the said witnesses in the criminal case were of no relevance in the present case.

5. Learned counsel for the petitioner has submitted that the petitioner wishes to produce on record the said statements under Section 161 CrPc so as to show the evidence given by DW-3 and Sakina (defendant No.1) was contradictory to the statement given under Section 161 CrPC. It is further submitted that the suit had been filed by the

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plaintiff and he would not gain anything by delaying the proceedings.

6. Learned counsel for the respondent on the other hand has submitted that the impugned order is in accordance with law and the present application apart from being not maintainable has been filed only to delay the proceedings.

7. This Court has heard learned counsel for the parties and has perused the paper-book and is of the opinion that the present revision petition is meritless and deserves to be dismissed for the reasons mentioned hereinafter.

8. It is not in dispute that the suit was filed even prior to the year 2011, inasmuch, the issues have been framed on 10.01.2011 and the evidence of the plaintiff/petitioner has been closed and even the evidence of the defendants has been closed and the case is at the stage of rebuttal evidence. The observations of the trial Court to the effect that the statements recorded under Section 161 CrPC can be used by the prosecution or defence for the purpose of contradiction only in a criminal case could not be rebutted by the learned counsel for the petitioner nor was shown to be against law. Even otherwise, a perusal of Section 162 CrPC clearly shows that the statement under Section 161 CrPC is neither required to be signed by the person making it nor any such statement could be used for any purpose, save as provided in the said provision. A perusal of said provision would further show that the said statement can only be used by the accused, and with the permission of the Court by the prosecution, to contradict the said witness in the criminal case. It is not in

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dispute that the said statements were not signed by the said witnesses and thus, it has been rightly observed by the trial Court that the said statements are of no relevance. Moreover, it is also not in dispute that the evidence of DW-3 as well as of the defendants had already been completed and thus, the stage of contradicting them has also passed. A perusal of the issues, which have been annexed as Annexures P-7 & P-8, would show that the onus of proving issue No.1 i.e. as to whether the mortgage deed executed by defendant No.1 in favour of defendant No.2 in respect to the land in question is against customs or is not binding upon the reversionary right to the plaintiff, as well as onus of, issue No.2 as to whether the plaintiff is entitled to relief of injunction or not and also onus of the additional issue 1-A, on the aspect of whether the alleged adoption deed is wrong or legal, is on the plaintiff. Thus, it was for the plaintiff to prove his case in the affirmative. Moreover, from the application dated 19.12.2017 (Annexure P-2), it was clear that while defendant No.1 Sakina was being examined, it was the case of the petitioner that Sakina had admitted about the registration of the criminal case and thus, the factum of the criminal case having been registered was apparently in the knowledge of the petitioner at the said stage and the moving of the present application in the year 2017 was thus, only to delay the proceedings.

9. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order passed by the Additional Civil Judge (Sr. Divn.), Ferozepur Jhirka (Mewat), dated 19.01.2018

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(Annexure P-4) is legal and does not call for any interference and the present civil revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

August 01, 2024

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(VIKAS BAHL)

JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes