

2024:PHHC:049251

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.929 of 2024

Date of Decision: 09th April, 2024

Jatinder Kaur

...Revisionist-Petitioner

Versus

Jaswant Singh and others

...Respondents

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Mukesh Garg, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.

By filing the instant revision-petition under Article 227 of the Constitution of India, the petitioner-plaintiff (here-in-after to be referred as 'the plaintiff') has laid challenge to the order (Annexure P-9) passed by learned Civil Judge (Junior Division), Patiala (for short 'the trial Court') on 08.01.2024 in *Civil Suit No.691 of 2023* titled as '*Jatinder Kaur versus Jaswant Singh and others*', whereby the application (Annexure P-7) moved by her under Order 14 Rule 5 CPC with the prayer for recasting/amending the issues, has been dismissed.

2. Bereft of the unnecessary details, the facts, as emanating from the perusal of the file and culminating in the filing of the present revision-petition, are that the plaintiff, who is the daughter-in-law of respondents-defendants No.1 & 5 and the sister-in-law of respondents-defendants No.2 to 4 (here-in-after to be referred as 'the defendants') filed the afore-referred

Civil Suit for seeking a decree for joint possession of the suit property and for declaration to the effect that the transfer-deeds dated 04.10.2022 and 06.10.2022 executed by defendant No.1 in favour of defendants No.2 to 4 were null and void and she was entitled to 1/5th share in the said property, with the further prayer for granting the relief of permanent injunction to restrain the defendants from alienating this property in any manner, while averring that the suit property was ancestral and coparcenary property and her deceased husband had got a right therein since the day of his birth. The defendants, in their joint written-statement, controverted the claim of the plaintiff on the basis of two Wills dated 31.05.1971 and 31.01.1992, stated to have been executed by Ganda Singh and Kirpal Singh respectively. After the filing of the replication by the plaintiff, the trial Court framed the issues vide the order Annexure P-4 as passed on 03.07.2023 and then, the plaintiff moved application Annexure P-7 for seeking recasting/amendment thereof, by way of framing an issue regarding the execution of the above-mentioned Wills and burdening the defendants to prove the same and the trial Court has dismissed this application vide the impugned order.

3. I have heard learned counsel for the petitioner-plaintiff in the instant revision-petition, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for the plaintiff has contended that these are the defendants who have asserted the factum of the execution of the afore-referred two Wills, in their written-statement and therefore, a specific issue should have been framed in view of these pleadings/assertions and they

(defendants) should have been burdened to prove the same but vide the impugned order, the trial Court has erroneously dismissed the application (Annexure P-7) as filed by the plaintiff in this regard and thus, it becomes explicit that the said order is not legally sustainable and hence, it deserves to be set-aside.

5. However, the above-raised contentions are devoid of any merit because the afore-mentioned reliefs of the joint possession, declaration and permanent injunction, as sought by the plaintiff in the Suit, hinge upon her averments to the effect that the suit property is ancestral and coparcenary property and that her husband (since deceased) had acquired a right therein since his birth. It being so, it is entirely for her (plaintiff) to substantiate her above-discussed averments, so as to claim the said reliefs and moreover, the determination/adjudication of nature of the suit property would also be a relevant and material factor to ascertain the legality of both the afore-referred Wills and therefore, no specific issue, as prayed for by the plaintiff in her application Annexure P-7, is required to be framed.

6. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, irregularity, infirmity or perversity so as to call for any interference by this Court. Resultantly, the revision-petition in hand, being *sans* any merit, stands dismissed.

09th April, 2024
neetu

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes