



130

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

CR-5107-2024

Date of decision: 05.09.2024

Sukhwinder Singh

...Petitioner

Versus

Amarjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Akshay Kumar Goel, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 03.02.2024 passed by the Civil Judge (Junior Division), Moga vide which an application filed under Order 14 Rule 5 read with Section 151 of CPC by the plaintiffs/respondent Nos.1 and 2 seeking framing of additional issues was allowed.

2. Learned counsel for the petitioner has submitted that in the present case, the issues were framed on 08.09.2021 and after the evidence of the parties had concluded, an application under Order 14 Rule 5 read with Section 151 of CPC was filed by the respondents/plaintiffs for framing the additional issues, which application was filed at the fag end of the case. It is submitted that the said application was meritless and the same should have



been dismissed but the trial Court vide impugned order dated 03.02.2024 had framed the additional issues which do not even arise from the pleadings of the parties.

3. This Court has heard learned counsel for the petitioner and has perused the paper book.

4. The undisputed facts in the present case are that respondent Nos.1 and 2/plaintiffs had filed a suit for grant of declaration to the effect that they were in established possession as co-sharers of land measuring 8 kanals bearing Khasra No.102//9(8-0), Khatauni No.1209, Khewat No.817/748 as per copy of jamabandi for the year 2012-2013 situated in the area of Village Talwandi Mallian, Tehsil Dharamkot, District Moga. Further prayer in the said suit was made for restraining the defendants from interfering in the peaceful possession of the plaintiffs in the land in question. Declaration was also sought to the effect that the alleged Tatima deed document dated 02.05.2017 allegedly executed by defendant No.1 in favour of defendant No.2 (petitioner) and others was illegal, null and void. In para 2 of the plaint, it was specifically pleaded that defendant No.1 had already sold her property and she was left with few marlas in the suit property and she had no right to sell, transfer or give any statement regarding the suit land and it was the defendants, who in connivance with each other, had got Tatima deed executed regarding the suit land to which the plaintiffs were not a party and on the basis of said Tatima deed, are seeking to get forcible possession from the plaintiffs.

5. In the written statement filed by defendant No.2 (petitioner), it was pleaded that true facts of the case were that the petitioner along with his



brothers had purchased land measuring 8 kanals bearing khasra No.102//9 from defendant No.1-Smt. Surjit Kaur vide registered sale deed dated 20.12.2000 but inadvertently in place of Khasra No.102//9, khasra No.88//9 was mentioned and for rectifying the said mistake, the petitioner along with his brothers had filed a suit on 29.04.2013 against defendant No.1 which was compromised in the Lok Adalat and in pursuance of the same, Tatima deed/amended sale deed dated 02.05.2017 was executed. It is not in dispute that the plaintiffs were not a party to the suit filed by defendant No.2 (petitioner) and his brothers dated 29.04.2013 which was compromised. An application dated 09.01.2024 (Annexure P-4) was filed by the plaintiffs/respondent Nos.1 and 2 for framing the additional issues and in the said application, it was their plea that at the time of execution of Tatima sale deed dated 02.05.2017, Surjit Kaur-defendant No.1 was not the owner of Khasra No.102//9 and thus, she had no title to transfer the same land comprised in the said khasra number to defendant No.2 (petitioner) and his brothers. The said application was opposed by the petitioner.

6. The trial Court, vide impugned order dated 03.02.2024, had allowed the said application and framed two additional issues and had granted the opportunity to the petitioner as well as respondents to lead evidence qua the same. Relevant portion of the said order dated 03.02.2024 is reproduced hereinbelow:-

“Issue NO. (1) That whether the defendants and legal heirs of Harwinder Singh became owner of the suit property measuring 8 Kanal of Khasra no. 102//9 by virtue of Tartima sale deed no. 125 dated 02.05.2017 (OPD)

Issued No. That whether defendant No. 1 Surjeet Kaur had any



right or title in Khsara no. 102/19 (8 Kanal) on 02.05.2017 when the Tartima sale deed no. 125 dated 02.05.2017 was executed. (OPD)

8. Now to come up on 12.02.2024 for plaintiff evidence. It is made clear to the plaintiff only one-one opportunity will be given to the both the parties to lead any evidence plaintiff evidence and no further opportunity will be provided. In case of failure the evidence will be deemed to be closed by order. Moreover the parties have conclude their evidence more the case is old and action plan category.”

7. A perusal of the pleadings between the parties would show that one of the primary issues which is involved in the present case is as to whether on 02.05.2017, when defendant No.1-Surjit Kaur had executed Tatima sale deed dated 02.05.2017, the said defendant No.1 had ownership rights in khasra No.102//9 and if so, then to what extent. It is the case of the plaintiffs that since defendant No.1 had no right in the said khasra number i.e. 102//9 thus, she could not have further transferred the same to the petitioner and his brothers. It is further the case of the plaintiffs that they were not party to the earlier suit filed in the year 2013 and thus, the same would not be binding on them. On the other hand, it is the case of the petitioner and his brothers that the sale deed was actually executed by defendant No.1 in favour of the petitioner and his brothers on 20.12.2000 but on account of mistake, khasra number was mentioned as 88//9 instead of 102//9.

8. Thus, the moot point in the present case which the trial Court had to determine is as to whether the ownership of defendant No.1-Surjit Kaur with respect to khasra No.102//9 was to be seen in the year 2000 or on



02.05.2017, when Tatima sale deed was executed and as to whether the said defendant No.1 had any right in the said khasra number on 02.05.2017 or not. The adjudication on the second issue framed would be relevant for the purpose of final adjudication of the case. Even the first additional issue framed to the effect that as to whether the defendants would become owner of the property in question by virtue of Tatima sale deed dated 02.05.2017, also arises from the pleadings and the said aspect would also be necessary to be adjudicated, as from the pleadings of the parties, it is apparent that the first registered document transferring the suit property comprising in khasra No.102//9 by defendant No.1 in favour of the petitioner and his brothers is the Tatima sale deed dated 02.05.2017.

9. In view of the same, the argument raised on behalf of learned counsel for the petitioner to the effect that the said issues do not arise for consideration, is completely misconceived and deserves to be rejected. The said two issues are material for the purpose of proper adjudication of the case. With respect to delay in framing of the said issues, suffice it is to say that it is the duty of the Court to frame the issues which arise from the pleadings of the parties and since, the earlier issues framed vide order dated 08.09.2021 (Annexure P-3) were not comprised of all the material issues which arise in the present case thus, the trial Court has correctly framed the additional issues by virtue of the impugned order dated 03.02.2024. Moreover, opportunity had been given to both the parties to lead evidence in case so desired, on the said additional issues.

10. The said impugned order was passed on 03.02.2024 and even thereafter, subsequent proceedings have taken place including passing of the



order dated 15.07.2024 (Annexure P-6) and the present revision petition has been filed after a delay of seven months from the date of passing of the impugned order. At any rate, since the impugned order is in accordance with law thus, the same deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

11. It is made clear that the observations made in the present order are only for the purpose of considering the legality or otherwise of the impugned order and the same would not be construed as a final expression on the merits of the suit which would be decided independently.

05.09.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No