



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

121

CR-7514-2024 (O&M)

Date of Decision: 20.12.2024

SMT. USHA DEVI AND ANR

.... Petitioners

VERSUS

GOMATI @ GOMTI AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Varun Goyal, Advocate and

Mr. Rahul Prashar, Advocate for the petitioners.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 27.11.2024 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Jalandhar whereby an application filed by the petitioners (defendants No.5 and 6) for leading additional evidence was dismissed.

2. Brief facts may be noticed. Plaintiff-respondent No.1 herein filed a suit for declaration making the following prayers :

‘Suit for declaration to this effect that the plaintiff is owner in joint possession over the property bearing Plot No.51 situated at Sadhu Singh Colony, Village Kingra, Tehsil & District Jalandhar, out of which 3 Marlas measuring 18 Ft. x 56 Ft. 6 Inch bounded as:-

East: Road

West: Road

North: Plot No.50

South: Remaining portion of plot No.51.

shown as red in the site plan attached bearing Hadbast No.301, Khewat Khatauni No.409/445, 410/446, Khasra No.787/2, 788, 819/1, 819/4, 820/1, 820/4, 822/1, 822/4, 823/2, 825/1, 1487/826/2, 790/1, 791/1, 820/3 and one house bearing No.45, Ward No.6, Naya Gaon, District Shatarpur, Madhya Pradesh.

AND

The alleged sale deed executed by defendant No.1 in favour of defendant No.5 dated 18.07.2016 is null and void inoperative without consideration and not binding upon the rights of the plaintiff and is liable to be set aside along with the mutation sanctioned on the strength of the above said sale deed.

AND

The mutation of inheritance sanctioned in favour of defendant No.1 of inheritance Chikori Ram deceased is null and void inoperative on the back of the plaintiff and for declaration that the alleged Will alleged to be executed by Chikori Ram deceased in favour of defendant No.1.

AND

For permanent injunction restraining the defendants from selling, alienating and creating charge over the property.

AND

Suit for declaration that the alleged sale deed alleged to be executed by defendant No.1 in favour of defendant No.6 is null and void, inoperative without completion and is not binding upon the rights of the plaintiff and the mutation sanctioned in favour of the plaintiff is liable to be set aside.’

3. On the basis of the pleadings of the parties, the following issues were framed on 01.02.2019 :

- ‘1. Whether the plaintiff is entitled to relief of declaration, as prayed for ? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for ? OPP
3. Whether the present suit is not maintainable ? OPD
4. Whether the plaintiff has not come to the Court with clean hands ? OPD
5. Whether the plaintiff has no cause of action to file the present suit ? OPD
6. Whether the plaintiff has no *locus standi* to file the present suit ? OPD
7. Whether the Court has no jurisdiction to try the present suit ? OPD
8. Relief.’

Yet again vide order dated 06.07.2022 certain additional issues were framed, which are as under :

- ‘1. Whether the plaintiff is estopped by her own act and conduct from filing the present suit ? OPD
2. Whether the suit filed by the plaintiff is false and frivolous ? OPD
3. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties ? OPD
4. Whether the present plaint is not filed in accordance with amended CPC ? OPD
5. Whether the site plan attached is not as per actual and factual position existing at the spot ? OPD
6. Whether the suit of the plaintiff is time barred ? OPD’

After the conclusion of the evidence, an application was filed by plaintiff-respondent No.1 for framing of additional issues. Reply was filed to the said application and the following additional issues were framed vide order dated 21.10.2024 :

- ‘1-A Whether the plaintiff is entitled to declaration that plaintiff is owner in joint possession of the suit property ? OPP
- 1-B Whether the plaintiff is entitled to declaration that sale deed executed by defendant No.1 in favour of defendant No.5 dated 18.07.2016 is null and void and further the mutation sanctioned on the basis of above said sale deed is liable to be set aside ? OPP

1-C Whether the plaintiff is entitled to declaration that mutation of inheritance sanctioned in favour of defendant No.1 and Chikori Ram is null and void and declaration that Will executed by Chikori Ram in favour of defendant No.1 ? OPP

1-D Whether the plaintiff is entitled to declaration that sale deed executed by defendant No.1 in favour of defendant No.6 is null and void and mutation sanctioned on the basis of abovesaid is liable to be set aside ? OPP'

Defendants No.5 and 6 (petitioners herein) filed an application for leading additional evidence. The additional evidence sought was to prove the unregistered Will executed by Chikori Ram dated 04.10.2024. Reply was filed to the said application. Vide the impugned order, the said application was dismissed. Hence, the present revision petition.

4. Learned counsel for defendants No.5 and 6 (petitioners herein) would contend that since additional issues were framed, hence, defendants No.5 and 6 (petitioners herein) ought to have been given an opportunity to lead additional evidence. In support of his contentions, learned counsel has relied upon the judgments passed by this Court in **Budh Singh V/s Mohinder Kaur & Ors. [2018 (5) RCR (Civil) 779]** and **Rattan Bala V/s Kiran Bala & Ors. [2011 (5) RCR (Civil) 631]** to contend that once additional issues are framed, additional evidence should be permitted.

5. Heard.

6. In the present case the suit filed by plaintiff-respondent No.1 was for declaration to the effect that plaintiff-respondent No.1 was owner in joint possession of the property bearing Plot No.51 situated at Sadhu Singh Colony, Village Kingra, Tehsil and District Jalandhar as fully described in the plaint. In the suit there was a specific challenge to the sale deed executed by defendant No.1 (respondent No.2 herein) in favour of defendant No.5 (petitioner No.2 herein) dated 18.07.2016. There was also a challenge laid to the mutation of inheritance sanctioned in favour of defendant No.1 (respondent No.2 herein) qua inheritance of Chikori Ram and further for declaring the Will alleged to have been executed by Chikori Ram in favour of defendant No.1 (respondent No.2 herein) being null and void. Initially, issue No.1 as framed was whether *the plaintiff is entitled to the declaration as prayed for*. Subsequently certain additional issues were framed and eventually on an application by plaintiff-respondent No.1 herein specific issues were framed qua the sale deed executed by defendant No.1 (respondent No.2 herein) in favour of defendant No.5 (petitioner No.2 herein) dated 18.07.2016. By way of the application for additional evidence defendants No.5 and 6 (petitioners herein) are not seeking permission to lead any evidence qua the sale deed but are seeking permission to lead additional evidence qua the unregistered Will alleged to have been executed by Chikori Ram. The application itself for additional evidence does not even state anywhere that the evidence sought to be led pertains to proving the sale deed. The Trial Court while dismissing the application noticed that numerous opportunities had been given to defendants No.5 and 6 (petitioners herein) to conclude their evidence and despite the same they failed to produce their evidence and by way of the

present application, defendants No.5 and 6 (petitioners herein) wanted to fill up the *lacunae* in their case which cannot be permitted in law. A perusal of the additional issues framed reveals that there is no additional issue which has been framed regarding the Will. That being so defendants No.5 and 6 (petitioners herein) cannot be permitted to lead additional evidence qua the Will.

7. The judgments relied upon by the learned counsel for defendants No.5 and 6 (petitioners herein) would be of no assistance as in the case in hand the evidence has not been sought to be led qua the additional issues framed but qua the unregistered Will regarding which no evidence was led by defendants No.5 and 6 (petitioners herein) at the proper stage.

8. In view of the above, I do not find any merit in the present petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.12.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No