

Jagsir Singh v. Malkit Singh, 2011 PLRonline 0207

PUNJAB AND HARYANA HIGH COURT

Before: Justice Jaswant Singh.

Jagsir Singh - Petitioner

Versus

Malkit Singh and Ors. - Respondent

Civil Revision No. 466 of 2011.

21.1.2011.

Civil Procedure Code, 1908, Order 18, Rule 17A - Additional evidence - Fixed for rebuttal evidence and arguments - Main plea of the petitioner was that the suit property was ancestral yet he has been thoroughly negligent in pursuing his cause - No issue regarding nature of the suit property was framed - Plaintiff/petitioner chose to remain silent at that stage and did not take necessary steps to re-frame/frame an additional issue in that regard - Evidence was closed by court order which has attained finality - Now the case is fixed for rebuttal evidence and arguments - At this belated stage, in the absence of any issue regarding the nature of the suit property, the petitioner cannot be permitted to lead additional evidence. [Para 8]

For the Petitioner : - T.D. Garg, Advocate.

JUDGMENT

Jaswant Singh, J. - Plaintiff/petitioner by filing present revision petition under Article 227 of the Constitution of India seeks setting aside of order dated 7.1.2011 (P2) passed by learned Civil Judge (Junior Division) Talwandi Sabo whereby his application for additional evidence has been dismissed.

2. The plaintiff/petitioner in the year 2008 filed a suit for declaration to the effect that he

and defendant/respondent No. 4 are in joint possession being co-sharers to the extent of $\frac{1}{3}$ rd share of land measuring 49 kanals 4 marlas, described in the plaint, being coparcenary/joint Hindu Family and ancestral property of the petitioner/plaintiff and defendants/respondents 3 and 4 (who are father and mother respectively of the petitioner) and that sale deed No. 3406 dated 1.1.2008 executed by defendant/respondent No. 3 in favour of defendants/respondents 1 and 2 is illegal, null, void, inoperative, liable to be set aside and not binding upon the rights of the petitioner/plaintiff and defendant/respondent No. 4.

3. Respondents/defendants in their written statement had stated that the suit property was self acquired property of defendant/respondent No. 3.

4. On the pleadings of the parties, issues were framed, but no issue was framed as to whether the suit property is ancestral and joint hindu family property of plaintiff/petitioner and defendants/respondents 3 and 4.

5. The evidence of the plaintiff/petitioner was closed by Court order on 21.4.2010.

6. Now the case is fixed for rebuttal evidence and arguments.

7. It is submitted by the learned counsel for the petitioner that in the absence of issue having been framed with regard to the nature of the property, plaintiff/petitioner could not produce the excerpts from revenue record to prove the nature of the suit land and as such he be now permitted to do so.

8. After hearing the learned counsel, in my opinion, the request of the plaintiff/petitioner at this belated stage cannot be acceded to. The main plea of the petitioner was that the suit property was ancestral yet he has been thoroughly negligent in pursuing his cause. No issue regarding nature of the suit property was framed. Plaintiff/petitioner chose to remain silent at that stage and did not take necessary steps to re-frame/frame an additional issue in that regard. Not only that he was also negligent in leading his evidence as his evidence was closed by court order which has attained finality. Now the case is fixed for rebuttal evidence and arguments. In my opinion, now at this belated stage, in the absence of any issue regarding the nature of the suit property, the petitioner cannot be permitted to lead additional evidence in that regard.

9. Finding no illegality or perversity in the impugned order the present revision petition stands dismissed.