
(2010) 07 P&H CK 0096
In the Punjab And Haryana At Chandigarh

Harnek Singh and Another	Vs	APPELLANT
Labh Singh and Another		RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 07 P&H CK 0096

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Plaintiffs have invoked the jurisdiction of this Court under Article 227 of the Constitution of India to assail order dated 24.3.2009, Annexure P/1, passed by learned Additional Civil Judge (Senior Division), Ropar, thereby dismissing application dated 24.3.2009, Annexure P/2 moved by the plaintiffs for framing of additional issues.

2. Plaintiffs have filed suit seeking declaration that judgment and decree dated 7.3.1992 are illegal, null and void, unconstitutional and not binding on the rights of the plaintiffs, having been obtained by fraud and misrepresentation regarding the suit land. The plaintiffs sought framing of additional issues as to whether judgment and decree dated 7.3.1992 are result of fraud and misrepresentation and whether Jiwa Singh never appeared before the court to admit the claim of present defendants leading to passing of judgment and decree dated 7.3.1992 alleging that the said issues are also arising from the pleadings of the plaintiffs.

3. I have heard learned Counsel for the parties and perused the case file.

4. Learned Counsel for the petitioners contended that only one additional issue as to whether judgment and decree dated 7.3.1992 are illegal and null and void and obtained by fraud and misrepresentation be framed and the plaintiffs would not lead any further evidence on the additional issue so framed and therefore, no prejudice would be caused to the defendants/respondents.

5. The contention has been opposed by learned Counsel for the respondents submitting that issue No. 1 already framed covers the proposed additional issues.

6. I have carefully considered the rival contentions. Issue No. 1 already framed is as under:

Whether plaintiffs are entitled for the declaration as prayed for? OPP

7. As noticed herein above, the plaintiffs have sought declaration that judgment and decree dated 7.3.1992 are illegal, null and void etc. Issue No. 1 covers the said plea of the plaintiffs that judgment and decree are illegal, null and void and based on fraud etc. as that is the declaration the plaintiffs are seeking. Issue No. 1 covers the question whether the plaintiffs are entitled to said declaration. It would mean that issue No. 1 would cover the question whether judgment and decree dated 7.3.1992 are illegal, null and void etc. and based on fraud and misrepresentation. In fact issue No. 1 has been specifically framed to decide the said question and therefore, additional issue regarding the same question is not required to be framed at all. The instant exercise by the plaintiffs is a completely futile exercise based on mis-conception or some oblique motive. It is pointed out by learned Counsel for the respondent that earlier also the plaintiffs sought framing of another additional issue and the same was allowed. Thereafter, the plaintiffs failed to lead evidence on the said issue but this Court in revision allowed another opportunity to the plaintiffs to lead evidence but they failed to meet the deadline and this Court allowed another opportunity to the plaintiffs and now this is third round of litigation. It is not explained by the plaintiffs why framing of proposed additional issue now sought by the plaintiffs was not sought when they earlier moved application for framing of another additional issue. Issues in the case were framed on 11.1.2005 whereas the application Annexure P/2 was moved on 24.3.2009 after much water had flown down the Ganges as noticed herein above.

8. Be that as it may, the fact remains that issue No. 1 already framed is very comprehensive and covers the proposed additional issue sought to be got framed by the plaintiffs. Accordingly, there is no necessity of framing the proposed additional issue which would be an exercise in futility. The application Annexure P/2 moved by the plaintiffs is completely misconceived and devoid of merit and has been rightly dismissed by the trial court. There is no illegality in the order of the trial court. The revision petition lacks any merit and is accordingly dismissed.