

(2019) 08 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 182 Of 2014

Makhan Singh

APPELLANT

Vs

Gurdev Kaur And Others

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Land Aquisition Act, 1894 — Section 30
Code Of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2019) 08 SHI CK 0036

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Veena Sharma, Ramakant Sharma, Dinesh Bhatia, Vinod Thakur,
Rakesh Kumar Bansal

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The petitioners are aggrieved by the verdict, rendered by the learned District Judge, Bilaspur, upon, CMP No. 378 of 2013, in Reference Petition No. 10, of, 2004, wherethrough, the learned Reference Court, directed the Revision Petitioners to establish their apposite title, through, a decree, of, the Civil Court. Hence the Revisionists, through, the instant civil revision petition, strive to cast, a, challenge thereon, and, obviously hence strive, to beget, reversal, of, the afore verdict.

2. After the learned Reference Court, had received, from the learned Land Acquisition Collector concerned, an apt reference petition, as constituted under Section 30, of the Land Acquisition Act, and also, it therealongwith receiving objections thereto, as reared by the Objectors concerned, it proceeded, to, during the pendency, of, the afore Land Reference Petition, hence make an order, on 18.3.2014, (a) wherethrough the legatees constituted, in the apposite testamentary dispositions, and who were not joined, in the array, of, petitioners, in the Reference Petition, were permitted, to, be joined in the array of

petitioners, in Land Reference Petition, bearing No. 10 of 2004. However, even prior to the rendition, of, the afore requisite order rather on 1.11.2013, upon, an application, cast under the provisions of Order 1 Rule 10 CPC, an affirmative order was made, for therethrough all the legal heirs, of, the deceased testator, and, who had cast a challenge, upon, relevant testamentary disposition, being hence added, in, the array of co-petitioners. Dehors the afore, despite the learned Reference Court, maintaining, the, Land Reference Petition, in its docket, and, also despite it, on 1.11.2013, and, also, subsequently, on 18.3.2014, making the afore order, it, yet proceeded to, on 1.11.2013, direct, qua the newly added parties, striving to establish, the, factum, qua the Will of the deceased testator, being proven, hence as validly and duly executed, rather, by theirs recouring, the, remedy of theirs instituting, a, Civil suit before the learned Civil Court concerned. The afore directions, made on 1.11.2013, are grossly impermissible, (b) as, the learned Reference Court, had received, from the Land Acquisition Collector concerned, a Reference cast under Section 30 of the Land Acquisition Act, and along wherewith also stood appended, the adversaries' objections, (c) and, when the core res-controversia, embodied therein, hence, appertains, to, the valid, and, due execution, of, the Will, of, the deceased testator, or otherwise and when wherethrough, the rival claims, for, compensation, as determined by the Collector concerned, vis-à-vis, the acquired lands, stood reared, (d) thereupon the learned Reference Court, was enjoined, to, upon receiving the Reference Petition, constituted, Under Section 30, of, the Land Acquisition Act, from, the learned Land Acquisition Collector, hence determine, the, dispute, appertaining, to, apportionment or entitlement of compensation, rather by converting itself, into, a Civil Suit, (e) for its therethrough, ensuring hence adduction, of, evidence, by the propounders, of the Will, vis-à-vis, its valid, and, due execution rather by the deceased testator, and, also the learned Reference Court, was enjoined, to, direct for, adduction, of, rebuttal evidence thereto, by the non-propounders, for therethrough hence, it making a clinching conclusion, vis-à-vis, the afore res-controversia.

3. Though, the afore apt recouring(s), were, enjoined to be made by the learned Reference Court, yet, they appear to have been both waived and abandoned, by it, (a) thereupon, the learned Reference Court, has, rendered rather nugatory the orders pronounced, on 1.11.2013, and, also has negated the orders, pronounced, on 18.3.2014, and, has despite, making an order, on 1.11.2013, it has thereafter also impermissibly, continued, to maintain, the, afore reference petition, in its docket. All the afore recouring(s), appear to stand sparked, by sheer non-application of judicial mind, by the learned Reference Court, vis-à-vis, the necessity, qua upon its receiving, a, reference petition, under, Section 30, of, the Land Acquisition Collector concerned, (b) it making a decision vis-à-vis, question of title, and, also it making a decision, after converting itself, into, a civil suit, a decision vis-à-vis, a valid, and, due execution, of, the apposite Will rather without its abandoning, the, requisite statutory functions, then to untenably direct the contesting litigants, to,

approach the Civil Court concerned, for, the relevant purpose.

4. Consequently, there is merit in the instant petition, and, the same is allowed. The verdict pronounced by the learned District Judge, Bilaspur, in CMP No. 378 of 2013, in Reference Petition No. 10 of 2004, is set aside. The pending application(s), if any, are also disposed of. No costs.