

(2011) 03 P&H CK 0352

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 775 of 2010 (O and M)

Suman Sharma and Another

APPELLANT

Vs

Mahindra Dass (deceased) through his L.Rs. and Others

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2011) 03 P&H CK 0352

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed u/s 115 of CPC read with Article 227 of the Constitution of India for setting aside impugned order dated 21.01.2010 passed by learned trial Court dismissing application of the Petitioner-Plaintiff for directing Special Kanungo/Patwari Muharrir to prepare excerpts of the property in dispute as per interrogatories attached with the application, Annexure P7 and as per High Court Rules and Orders, Volume I, Chapter 9.

2. I have heard learned Counsel for the parties and have gone through the whole record including the impugned order passed by learned trial Court.

3. Facts relevant for the decision of the present revision petition are that, the present suit has been filed by petitioner-plaintiff by taking plea, inter alia, that the land in dispute is joint Hindu family coparcenary property in the hands of Mohinder Dass i.e. Defendant No. 1 and hence, various transfer deeds and sale deeds executed by Mohinder Dass in favour of defendants No. 2 and 3 are illegal and null and void being forged and fabricated. Suit was contested by Respondents-Defendants. Issues were framed. Case was fixed for evidence of petitioner-plaintiff. However, talks of compromise started between the parties. Hence, evidence of petitioner-plaintiff could not be recorded and however, the compromise talks failed. Case was fixed for evidence of petitioner-plaintiff when

the present application was filed by petitioner-plaintiff for directing Special Kanungo/Patwari Muhrrir to prepare revenue excerpts regarding the property in dispute to prove the nature of property in the hands of Mohinder Dass. The said application was dismissed by learned trial Court vide impugned order dated 21.01.2010 against which the present revision petition has been filed.

4. A careful perusal of the impugned order shows that the application of the petitioner-plaintiff has been dismissed merely on the ground that the same was filed at later stage. However, it has been explained by learned Counsel for the petitioner that the case was adjourned time and again for compromise and however, when the compromise talks failed, on very next day the present application was filed.

5. High Court Rules and Orders Volume I, Chapter 9 provides for utilising the services of special Kanungo or Patwari Muhrrir. The present is the case in which nature of property in the hands of Defendant No. 1 is to be determined. Hence, examination of Special Kanungo/Patwari Muhrrir along with the relevant record after preparing excerpts would facilitate the decision of the case. Moreover, it has been provided in the High Court Rules and Orders Volume I, Chapter 9 that Special Kanungo/Patwari Muhrrir after preparing excerpts would come to the Court on the date fixed, taking with him the revenue records from which the excerpts have been compiled. He would then appear in the witness box and counsel would have the opportunity of comparing the excerpts with the originals and examining him on any point they choose.

6. Hence, in view of these facts illegality and material irregularity has been committed by learned trial Court in declining the request of petitioner-plaintiff for directing the Special Kanungo/Patwari Muhrrir to prepare excerpts of the property in dispute as per interrogatories attached with the application, Annexure P7 and as per High Court Rules and Orders, Volume I, Chapter 9. So far as the fact that application was not moved immediately after framing of issues by petitioner-plaintiff causing delay in the decision of the case is concerned, the other party can be compensated by way of cost.

7. Hence, in view of aforementioned facts, the present revision petition is accepted and the impugned order is, hereby, set aside.

8. Learned trial Court is directed to direct Special Kanungo/Patwari Muhrrir to prepare excerpts of the property in dispute as per Annexure P7 and he shall be permitted to be examined along with original record by petitioner-plaintiff.

9. However, petitioner-plaintiff is burdened with cost of Rs. 5,000/-, which shall be a condition precedent.

10. The present revision petition is disposed of accordingly.