

(2012) 09 P&H CK 0324

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 5363 of 2012 (O and M)

Manjit Singh

APPELLANT

Vs

Baljit Singh and Others

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Constitution of India, 1950 - Article 227

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

Bench: Single Bench

Advocate: Anand Chhibber, with Mr. Vaibhav Sahni, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 23043-CII of 2012

Allowed as prayed for.

Main Case

1. In this revision petition filed under Article 227 of the Constitution of India, defendant No. 1-Manjit Singh has assailed order dated 21.08.2012 Annexure P-6 passed by learned Civil Judge (Senior Division), Faridabad thereby dismissing application Annexure P-3 moved by defendant No. 1 for directing wife and one of the legal representatives of defendant No. 2 i.e. respondent No. 3 herein to produce the alleged original family settlement dated 21.10.2002 and in the alternative, to permit the defendant No. 1-petitioner to lead secondary evidence thereof. Defendant No. 1 pleaded in the application that original family settlement dated 21.10.2002 is lying with respondent No. 3 after death of her husband i.e. defendant No. 2 whereas photostat copy thereof is available with defendant No. 1.

2. The application was opposed by respondent No. 3. by filing reply Annexure P-4 wherein she denied the existence or custody of the alleged family settlement. It was pleaded that no such family settlement had taken place. Plaintiff No. 1. also opposed the application by filing reply Annexure P-5.

3. Learned trial Court vide impugned order Annexure P-6 has dismissed application Annexure P-3 moved by defendant No. 1 who has, therefore, filed this revision petition to challenge the said order.

4. I have heard learned counsel for the petitioner and perused the case file.

5. Counsel for the petitioner vehemently contended that defendant No. 1 specifically pleaded the family settlement in the written statement and, therefore, defendant No. 1 should be allowed to lead secondary evidence of the family settlement which has been signed by all the parties.

6. I have carefully considered the aforesaid contention but the same is misconceived and meritless. Defendant No. 1 had earlier filed a suit in February 2002 wherein he pleaded family settlement dated 10.02.2002. In the instant suit, defendant No. 1 in his written statement Annexure P-2 referred to family settlement without mentioning the date thereof. Consequently, at best, the family settlement referred to by defendant No. 1 in his written statement could be the alleged family settlement dated 10.02.2002 which had already been pleaded by him in his earlier suit and of which the other parties were aware. Not a remote reference was made in the written statement Annexure P-2 by defendant No. 1 to alleged family settlement dated 21.10.2002. Even in the witness box, defendant No. 1 did not state about the same. Consequently by way of application Annexure P-3, defendant No. 3 wanted to set up a new case in the garb of secondary evidence which could not be permitted. The alleged family settlement dated 21.10.2002 is completely beyond the pleadings and consequently even primary evidence thereof, much less secondary evidence, could not be permitted. Application Annexure P-3 moved by defendant No. 1 has, therefore, been rightly dismissed by the trial Court. For the reasons aforesaid, I find no merit in this revision petition. Impugned order of the trial Court does not suffer from any perversity, illegality or jurisdictional error so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly the revision petition is dismissed in limine.