

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1651 of 2014 (O&M)

Date of decision: 07.08.2015

Balbir Singh Wasu, Advocate

.... Petitioner

versus

General Public and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Balbir Singh Wasu, Advocate, in person.

Mr. Puneet Jindal, Senior Advocate,
with Mr. Rajbir Wasu, Advocate,
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The petition is against an order rejecting a plea for framing an issue on an averment made in the petition relating to Harnam Singh Wasu as having obtained a fractional share of the property bequeathed in exchange of Malvinder Kaur Wasu. This fact of exchange was denied in reply and the contesting party wanted, therefore, an additional issue to be framed of whether Harnam Singh Wasu and Malvinder Kaur Wasu had entered into any form of exchange in the manner contended in the petition. The

objector wanted the following the issue to be framed:-

“Whether late S. Harnam Singh Wasu exchanged 5/12th share of his House No.15, Sector 9-A, Chandigarh with House No.1185, Sector 8-C, Chandigarh belonging to Malvinder Kaur Wasu? OPP”

2. The court rejected such a plea on a reasoning that a probate court does not deal title to the property nor has it the competency to pronounce on the same. The key issue at all times would be only the truth and validity of a Will propounded and to examine whether there are any suspicious circumstance. The objector is in revision to say that Harnam Singh Wasu was the full owner of the property and there was no form of exchange. If the exchange were not to be true, it would clearly bring out a fact of strong suspicious circumstance against the truth of disposition itself. According to the counsel, the issue of fact which was pleaded and contested by the defendant ought to be specifically framed as an issue to enable the court to adjudge on the validity of the Will.

3. The averments which are mentioned in the petition are the manner of bringing to the particular circumstances under which a Will that is propounded was said to have been executed. If any of such averment in the petition is not true, the party will still not be left without a right to cross-examine on every aspect which is already averred in the petition. If the petitioner, who propounds a

Will, makes an averment regarding some exchange as having taken place, the person that objects to the Will will have a right to cross-examine on the averment pleaded. If he is able to elicit in the cross-examination and call the party the bluff, then if the that line of cross-examination has vindicated the defence and would advance his contention that the Will was suspicious, the court shall take that to be a relevant fact for consideration and pronounce its judgment about the truth and genuineness of the Will. A specific issue is wholly a different matter. The fact that an issue is not allowed to be framed does not mean irrelevance of a cross- examination on an aspect which is affirmed by the petitioner and denied by the other side in the pleadings. If an issue is framed, it ought to have a meaning for assessing the rights of party. It may well happen that a testament is made by a person in respect of a property of which he is not the owner. The court will not be derailed into examining whether he had a disposing authority to execute a Will in respect thereof. That will bring an element of issue of ownership over the property which a court exercising testamentary jurisdiction will not exercise. The scheme of the Indian Succession Act that sets out in Part VIII contemplates only a “representative title” to the property and not proprietary title over the property. It will needlessly enlarge a scope of enquiry and create future complications, if ever there was to be an issue on the title of Harnam Singh Wasu with reference to

the property which is disposed of. The court's reasoning for rejection of a claim to frame an additional issue had been properly reasoned and I will find no error for an intervention in revision. Revision petition is dismissed.

(K.KANNAN)
JUDGE

07.08.2015
sanjeev