

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

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CR No.1678 of 2014 (O&M)

DATE OF DECISION: March 23, 2015.

Dimple Oberoi and others

....Petitioners.

VERSUS

Meenu Bhardwaj and others

....Respondents.

CORAM : HON'BLE MRS. JUSTICE SABINA

Present: Ms. Abha Rathore, Advocate
for the petitioners.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Mayank Mathur, Advocate
for the respondents.

SABINA, J.

Petitioners have filed this petition challenging the order dated 04.02.2014, whereby application moved by the petitioners to lead additional evidence to prove Will dated 07.04.2006, was dismissed.

I have heard the learned counsel for the parties and have gone through the record available on the file carefully.

Petitioners have filed a suit for specific performance of agreement to sell dated 30.03.2005 executed by defendant A.B. Khosla. Defendant A.B. Khosla appeared before the trial Court and filed his written statement. During the pendency of the suit defendant A.B. Khosla died and

his legal representatives were brought on record. Now the case is listed before the trial Court for rebuttal evidence of the petitioners, if any, and arguments. At this stage, petitioners moved an application for permission to prove Will dated 07.04.2006 executed by A.B. Khosla.

Learned trial Court while dismissing the application moved by the petitioners for permission to lead additional evidence has held as under:-

“After hearing learned counsel for the parties, & after going through the file, this court is of the view that the application under consideration merits rejection. From the facts narrated above, it is evident that the controversy in question is regarding specific performance of the agreement to sell dated 30.03.2005 allegedly executed by the defendant no.1 A.B. Khosla (since deceased) in favour of the plaintiff no.1. The plaintiff had got the record of Will No.5 dated 07.04.2006(allegedly executed by A.B. Khosla) summoned by moving the application in this regard for effective cross-examination of DW7 Menu Bhardwaj and if she has denied execution of the aforesaid will by father, the same does not permit the plaintiffs to lead evidence regarding execution of that Will in this case by travelling beyond the scope of the controversy in question. The onus to prove the execution of the agreement to sell in question of defendant no.1 A.B. Khosla in favour of plaintiff no.1 was lying on the plaintiffs and now by taking recourse to the provisions of the procedural law, the plaintiffs cannot be allow to fill up the lacunae of their case, if any if left out by them while leading their affirmative evidence.

On the basis of the aforesaid discussion, the application filed by the plaintiffs seeking permission to lead additional evidence to prove the execution of Will

No.5 dated 07.04.2006 by A.B. Khosla is rejected. To come up on 12.02.2014 for rebuttal evidence, if any, and for arguments.”

Reasons given by the trial Court while dismissing the application are sound reasons. A.B. Khosla had already filed his written statement and issues were framed on the basis of the pleadings of the parties. Trial Court is to decide the controversy between the parties as per their pleadings. Hence, the Will in question is not necessary to be proved on record for the just decision of the case.

Dismissed.

**(SABINA)
JUDGE**

March 23, 2015.

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