

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 323 of 2013
Date of Decision : 27.01.2015

Sunita

....Petitioner

Versus

Pawan Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

Present: Mr. B.S. Mittal, Advocate
for the petitioner.

Mr. Ashok Verma, Advocate
for the respondents.

R.P. Nagrath, J. (Oral)

The instant petition has been filed under Article 227 of the Constitution of India seeking to set aside the order dated 08.12.2012 (Annexure P-6) passed by the trial Court.

I have heard learned counsel for the parties at considerable length and perused the impugned order and the paper-book.

The whole claim of the petitioner-plaintiff is based on the Will dated 25.03.1994 of Birjo, allegedly executed in favour of mother of the petitioner. The contesting defendant-respondents have been denying the execution of the Will as per their pleadings. Issue No. 5 from the original pleadings of the parties as framed by the trial Court on 29.3.2005 is “whether Smt. Birjo executed Registered Will dated 25.03.1994 as a document procured by fraud, if so its effect? OPD” In view of the original pleadings of the

parties, the onus of issue No. 5 on the Will dated 25.3.1994 should have been upon the plaintiff. This issue, therefore, reframed would be “whether Smt. Birjo executed a valid Will dated 25.3.1994 in her sound disposing mind in favour of the mother of the plaintiff? OPP”

The learned counsel for the petitioner, therefore, contended that after the onus of the issue on Will has been placed upon the petitioner which is the main point to contest, the petitioner should be afforded fresh opportunity to lead his evidence although, the evidence was initially closed by the petitioner-plaintiff on 31.1.2007. The aforesaid prayer has been made because the issues which were reframed by the trial court after the fresh written statement was filed on behalf of respondent/defendant No. 7- Pawan Kumar, have been deleted by the trial Court simply on the ground that fresh written statement filed on his behalf was withdrawn. The fresh written statement was filed because of the death of defendant No. 1-Krishan, father of minor defendant and appointing another Court guardian for minor defendant No. 1. After filing of such written statement, the case was fixed for evidence of the plaintiff on reframing of the issues but those issues, now have been omitted because of withdrawal of the written statement.

Since onus of the issue on the Will, which is mainly a point of contest, is now upon the petitioner, the instant petition is disposed of with the modification as aforesaid and liberty to the petitioner to file application before the trial Court for leading her

evidence either by way of right because of shifting of the onus or by way of additional evidence. On moving such an application, within two weeks from the date of receipt of certified copy of this order the trial Court is directed to dispose of the same in accordance with law, without being influenced by the observations in impugned order or the fact that the evidence was earlier closed.

January 27, 2015
jk

(R.P. NAGRATH)
JUDGE