

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 4890 of 2013

Date of decision : September 7, 2015

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Malkiat Kaur

.....Petitioner

Versus

Sukhwinder Kaur and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Deepak Verma, Advocate for the petitioner.

Mr. Sarju Puri, Advocate for respondent no.1.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner-plaintiff has come up in this revision petition against the order dated 23.7.2013 (Annexure P-4) whereby an application dated 10.7.2013 (Annexure P-2) made by the petitioner-plaintiff for producing and proving on record the original Will and for exhibiting the same by recalling its Scribe PW-4 and attesting witness PW-1 has been declined.

Petitioner-plaintiff had filed a suit for declaration to the effect that the petitioner-plaintiff is the exclusive owner in possession of the suit land within the Lal Lakir measuring about 25 marlas situated in the area of V. Talwandi Jattan, Tehsil and Distt.

Nawanshahar. The entire claim of the petitioner-plaintiff was based on the Will dated 13.4.2005 executed by Major Singh. The petitioner-plaintiff led her evidence after availing numerous opportunities but no steps were taken by her to produce and prove original Will on record. At the stage of rebuttal evidence, the present application for leading additional evidence was made to prove the Will dated 13.4.2005. The trial Court has dismissed the above said application. Reliance was placed in the case of **Kuldeep Singh vs. Surjit Kaur and others, 1999 (2) Civil Court Cases 56 (P&H)**, wherein it was held that when a party consciously proceeds with the case and does not produce the evidence which he could have produced then it is improper to invoke the provisions of Order 18 Rule 17-A CPC. Reference was also made to a judgment in the case of **Chand Singh vs. Naranjan Singh and another 1990 (1) SLJ 292**, wherein it has been held that where the evidence of plaintiff was closed by the order of the Court and the same is never challenged, in these circumstances, plaintiff is not entitled to lead additional evidence.

Heard counsel for the parties. The main dispute between the parties is based on the Will dated 13.4.2005 which has been executed by Major Singh. During the course of evidence, the petitioner-plaintiff has examined 5 PWs including PW-1 (Attesting witness of the Will) and PW-4 (Scribe of the Will) and also presented/placed on record the notarized copy of said Will dated 13.4.2005 at the time of course of plaintiff's evidence through PW-2,

Kulwinder Singh, son and lawful attorney of plaintiff-petitioner. After closing of petitioner-plaintiff's evidence on 24.7.2012, the respondent-defendant took almost one year to conclude his evidence. Thereafter the present application was made for placing on record the original Will dated 13.4.2013 and for exhibiting the same by recalling its scribed PW-4 Bhupinder Singh Deed Writer and PW-Tarjit Singh, one of its attesting witness. Another one year was taken by the trial Court to dismiss the application on 23.7.2013. The plaintiff had placed on record the notarized copy of the Will. The entire claim was based on the said Will. The application for placing on record the original Will dated 13.4.2013 should have been allowed as this was the main document which was the subject matter of the final decision of the suit.

In view of all that has been discussed above, the impugned order dated 23.7.2013 (Annexure P-4) is being set aside and the revision petition is being allowed with the cost of Rs.5000 to be deposited by the petitioner-plaintiff before the trial Court with a further direction that Rs.10,000/- which has been already deposited by the petitioner-plaintiff in pursuance to the order of this Court dated 20.8.2013 be released to the respondent-defendant through his counsel immediately.

September 7, 2015
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(**RITU BAHRI**)
JUDGE