

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

**Civil Revision No.5170 of 2012 (O&M)
Date of decision: August 25, 2015**

Smt. Sudesh Kumari

.....Petitioner

Versus

Ram Krishan and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Karan Singh Cheema, Advocate,
for the petitioner.

Mr. Ankur Soni, Advocate,
for respondent No.2.

R ITU BAHRI, J.

CM No.15178-CII of 2013

Statement of Ravinder Singh, DW-4 (Annexure P-1) is taken on
record.

Misc. application stands allowed accordingly.

CR No.5170 of 2012

Smt. Sudesh Kumari-plaintiff No.2 (petitioner herein) has come
up in this revision petition against the order dated 27.07.2012 passed by the
Civil Judge (Junior Division), Hoshiarpur, whereby her application for
framing of an additional issue has been dismissed.

The plaintiffs have filed a suit for separate possession by metes
and bounds, after partition of the properties, detailed in the head note of the
plaint, on the basis of revenue record and natural succession. In the written

statement filed by defendant No.2-Ram Rattan, a specific stand has been taken that Bhagat Ram had executed a Will dated 18.06.1978, according to which, he had bequeathed his entire estate in favour of his four sons and did not give any share to his daughters. After the death of Bhagat Ram, mutation relating to the suit property was sanctioned in the revenue record without any objection from any of the daughters of Bhagat Ram.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiffs are entitled for relief of separate possession after partition? OPP
2. Whether plaintiffs are estopped by their acts and conducts from filing the present suit? OPD
3. Whether site plan attached with the plaintiff is incorrect? OPD
4. Whether defendant Nos. 5 to 13 have been unnecessarily impleaded in this suit? OPD
5. Relief.

Plaintiff No.2-petitioner by way of present application, intends to frame an additional issue, which is as under:-

“Whether Bhagat Ram executed a Will dated 18.06.1978 in favour of his four sons? OPD 2”

The fact with regard to execution of the Will dated 18.06.1978 was mentioned in the written statement itself. This fact was also admitted by the plaintiffs in their replication, however, it was stated that the alleged Will was only qua the agricultural property and there was no recital with regard to the property situated in *lal lakir* of the village. It was also alleged that the

copy of the Will dated 18.06.1978 produced by defendant No.2 was forged and fabricated document, as the original Will was produced at the time of sanctioning of mutation, which is not available at present.

Once the execution of Will dated 18.06.1978 has been admitted by the plaintiffs in the replication itself, then there was no requirement for framing of an additional issue with regard to the said Will. The onus to prove the Will dated 18.06.1978 was on the defendants and they have led sufficient evidence to prove the same by examining marginal witnesses of the Will. The issue, which is proposed to be framed by the petitioner, is already covered by issue No.1. Once execution of the Will dated 18.06.1978 is proved by the defendants, it will have a bearing on issue No.1.

At this stage, learned counsel for respondent No.2 has informed that the trial is at the stage of final arguments.

In view of the above, the trial Court has rightly dismissed the application of the petitioner for framing of additional issue. No ground is made out to interfere with the same.

Dismissed.

However, the plaintiff-petitioner can lead evidence in rebuttal to the evidence led by the defendants, if not led as yet.

August 25, 2015
ritu/ajp

(RITU BAHRI)
JUDGE