

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

C.R. No. 743 of 2015 (O & M)

Date of decision: 06.02.2015

Gurcharan Singh

....Petitioner(s)

Versus

Bachan Kaur and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms. Samiya Singh, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 2705-CII of 2015

Application for placing on record Annexures P-4 to P-7 is
allowed, subject to all just exceptions.

The said Annexures are taken on record.

C.R. No. 743 of 2015

Challenge in the present revision petition is to the order dated
12.01.2015 (Annexure P-3) whereby, the application filed by the plaintiff-
petitioner to lead secondary evidence to prove the Will dated 15.04.2007 at
the stage of rebuttal evidence has been dismissed.

The reasoning which has weighed with the trial Court is that it
was in the knowledge of the plaintiff that the original Will, nor its certified
copy has been placed on record and even Ex.P-7 showed that the Will was
not with the Revenue Authorities. The case being fixed at rebuttal
evidence, the application was held not maintainable as it would cause
irreparable loss to the defendant and would end up leading to reopening of
the entire evidence.

Counsel for the petitioner has vehemently argued on the strength of the order passed by this Court in ***C.R. No. 1216 of 2005, Avtar Singh vs. Niranjana Singh and another decided on 15.09.2006*** that even at rebuttal stage, the application could have been allowed.

After hearing counsel for the petitioner, this Court is of the opinion that the said argument is not liable to be accepted. Admittedly, the petitioner filed a suit for declaration on the strength of the Will dated 15.04.2007 executed by Jwala Singh alleging to be his nephew. In the suit itself, it was specifically averred that the Will had been handed over to the Revenue Authorities and the Assistant Collector had wrongly sanctioned mutation in favour of Bachan Kaur, wife of Jwala Singh. Thus, it is apparent that right from day one, the case of the petitioner was based on the Will itself and he had to lead evidence in the affirmative to prove the existence of the Will and to prove the same. It is apparent that the petitioner-plaintiff has failed to do so. After the closing of the evidence, once the defendant had led evidence, the application was filed for secondary evidence to prove the Will on the ground that it was missing in the revenue record. The application was opposed on the ground that it cannot be permitted at the rebuttal stage and no such Will had been produced before the Revenue Authorities at the stage of the Collector and the Commissioner and the Will was forged and fictitious document. The application has been dismissed, as noticed, in view of the reasons given above.

The onus thus was right upon the petitioner from day one and even otherwise, he cannot be allowed to prove the Will by way of rebuttal evidence keeping in view the law laid down by four Division Benches of this

Court in ***Smt. Jaswant Kaur and another vs. Devinder Singh and others,***

1983 (2) RCR (Rent) 57; Surjit Singh and others vs. Jagtar Singh and others, 2007 (1) PLR 552; Jagdev Singh and others vs. Darshan Singh and others, 2007 (1) RCR (C) 794 and C.R. No. 2203 of 2010, Avtar Singh and another vs. Baldev Singh and others decided on 21.11.2014.

The judgment which has been relied upon by counsel for the petitioner in *Avtar Singh vs. Niranjana Singh's case (supra)* would not be applicable in the facts and circumstances of the present case since it was not brought to the notice of the Co-ordinate Bench the binding precedent of the Division Bench judgment in *Smt. Jaswant Kaur's case (supra)*. Thereafter, the other judgments referred above have also clarified the position.

Accordingly, the order passed does not suffer from any infirmity which would warrant interference under Article 227 of the Constitution of India and the present revision petition is accordingly dismissed.

06.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE