

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 8322 of 2015 (O/M)
Date of decision : 8.12.2015

Nishan Singh

..... Revisionist

Versus

Bhajan Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aseem Kalia, Advocate, for the revisionist.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present revision is the order dated 28.10.2015 (Annexure-P-5), passed by the learned Civil Judge (Senior Division), Tarn Taran, vide which the application filed by the revisionist/defendant under Section 33 of the Indian Evidence Act, 1872 read with Section 151 of Code of Civil Procedure, 1908, for permission to tender into evidence the certified copy of statement of Baldev Singh, a witness of the Will dated 24.9.1984, was declined.

It was stated in the application that defendant wants to prove that the Will dated 24.9.1984 was executed by Dara Singh son

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of Banta Singh, in favour of his grandson, namely, Nishan Singh (defendant). The said Will was attested by Sajjan Singh, Numberdar and Baldev Singh and scribed by Harvinder Singh. Sajjan Singh (Numberdar) and Harvinder Singh are dead, whereas Baldev Singh is stated to be alive. Baldev Singh has colluded with other party and did not appear before the lower Court, despite summon and bailable warrants issued against him. Now, the defendant wants to prove the copy of the statement made by Baldev Singh between the same parties in another case. The short order passed by the lower Court on the application is reproduced as under :-

“Heard on application dated 9.10.2015.

File perused carefully. Perusal of the file shows that in this case evidence of defendant was closed vide order dated 30.4.2015. When defendant/applicant filed revision against that order, he was granted one opportunity to lead his evidence by the Hon'ble Punjab and Haryana High Court but again defendant No. 2, applicant, failed to conclude the same and again evidence of applicant was closed vide order dated 7.8.2015. Against that order, applicant again filed revision and same has been dismissed vide order dated 26.8.2015 by Hon'ble Punjab and Haryana High Court. Now when this case was fixed for rebuttal evidence then again applicant moved application u/s 151 CPC to examine expert to prove the Will in question, that application too was dismissed vide order dated 22.9.2015. Not only this now present application has

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been moved with the same motive to prove abovementioned Will. Defendant No. 2/applicant, it seems want to prolong proceedings of this case, one way or the other, and the application in hand is devoid of any merit. Accordingly, same is hereby dismissed with cost of Rs. 500/-. Now, to come up 4.11.2015 for entire rebuttal evidence of plaintiff at own responsibility. Dasti summons be given if required.”

The perusal of the application shows that it is infact an application for leading additional evidence.

First of all, this certified copy of statement of Baldev Singh was available when the earlier revision i.e. CR No. 3572 of 2015 was filed and additional opportunity was granted by this Court on 25.5.2015, after his evidence was closed by orders, subject to payment of Rs. 2,500/- as costs, to be deposited with the Legal Services Authority, Tarn Taran. The present revisionist has approached this Court twice. Once he was given one opportunity to lead the evidence and when he failed to lead the evidence and his evidence was again closed by orders, he again approached this Court by filing CR No. 5490 of 2015 and his revision was dismissed by this Court on 26.8.2015. Thereafter, he moved an application, apparently for additional evidence to examine the expert to prove the Will in question. The said application was also dismissed, vide order dated 22.9.2015, passed by the lower Court. Now, again the

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present application for additional evidence has been filed. Once the evidence of the defendant is closed by orders, he cannot be allowed backdoor entry. He has approached this Court twice, yet failed to conclude his evidence. The order of closing his evidence has already become final. Even after having failed to convince this Court to grant another opportunity, the present revisionist again unsuccessfully tried backdoor entry by moving an application to examine the expert to prove the Will in question and when that failed, the present application has been filed.

I am of the view that in view of the earlier orders passed by the lower Court, which is confirmed by this Court, the present revisionist is not to be allowed to lead further additional evidence. Therefore, the present revision is dismissed with costs quantified at Rs. 20,000/-, to be deposited in the District Legal Aid Fund, Tarn Taran.

(KULDIP SINGH)
JUDGE

8.12.2015
sjks