

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

Civil Revision No. 8379 of 2015 (O&M)

Date of decision : 9.12.2015

Harkesh

..Petitioner

versus

Roopchand (deceased) through LRs and another

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Arun Yadav, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition filed by defendant No.1 is to the order dated 15.9.2015 passed by the learned court below, vide which the prayer of the petitioner for dismissal of the suit as withdrawn in terms of the statement made by the plaintiff before the court before his death, was declined.

In the case in hand, Sheobaksh had two sons, namely, Roopchand and Chet Ram. Roopchand had three sons and one daughter, namely, Madan, Gajraj, Lal Singh and Krishna Devi. Chetram died issueless. The dispute is pertaining to his property. The present petitioner is son of Gajraj son of Roopchand. The suit was filed by Roopchand, grandfather of the petitioner challenging two unregistered Wills dated 27.9.2012 and 10.12.2012 allegedly executed by Chetram in favour of the petitioner. Chetram died on 10.12.2012. Meaning thereby, one of the Wills was got executed on the date of his death. As per the pleadings, Chetram was about 80 years of age at that time. It is claimed that after notice was issued in the suit, which was filed on 4.1.2013, on 22.2.2013, Roopchand appeared in Court and made a statement that he does not want to pursue the suit. On the same date, an application was filed by Madan son of Roopchand specifying that the age of Roopchand-plaintiff is about 90 years and he had been pressurized by the defendant to make statement before the court. On that application, the case was adjourned. Thereafter,

Roopchand died on 28.2.2014. His sons, namely, Madan, Gajraj and Lal Singh and daughter Krishna Devi filed application for impleadment as LRs of Roopchand. Learned court below while allowing that application, rejected the prayer made by the petitioner for dismissal of the suit as withdrawn.

The contention sought to be raised by learned counsel for the petitioner was that once the plaintiff had made a statement before the court that he does not want to pursue the case, the court has no option, but to dismiss the suit as withdrawn.

After hearing learned counsel for the petitioner and considering the totality of the facts as even noticed above, wherein, the Wills impugned before the court below are dated 27.9.2012 and 10.12.2012 alleged executed by late Chet Ram, who died on 10.12.2012 and the dispute being in the family members, further the plaintiff, who made statement before the court seeking permission to withdraw the suit is no more alive, in my opinion, learned court below has not committed any error in rejecting the prayer made by the petitioner at this stage for dismissal of the suit as withdrawn. The fact that the LRs have their individual right to challenge the Wills was not even disputed by learned counsel for the petitioner.

For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly, dismissed.

(Rajesh Bindal)
Judge

9.12.2015

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