

CWP No.18864 of 2015

[1]

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

**CWP No.18864 of 2015
Date of decision:16.09.2015**

Inderjit Kaur Gahunia and others ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rohit Khanna, Advocate,
for the petitioners.

Rakesh Kumar Jain, J.

The facts giving rise to this Petition are that petitioners No.1 and 2 got married on 21.07.1980 but their marriage was dissolved by a decree of divorce on 14.12.2012. Petitioner No.1 (wife) instituted financial remedy proceedings on 01.03.2014 in the Family Court at Slough (England). In those proceedings, petitioner No.3 (elder brother of petitioner No.2) and petitioner No.4 (younger sister of petitioner No.2) joined as interveners by way of an order dated 10.01.2014 because they had contended that since they have a legal and beneficial interest in the immovable properties situated in India, namely, (a) commercial property at Unit 534, New Jawahar Nagar, Jalandhar, India; (b) agricultural land at village Bhora, Tehsil and District Nawanshahar; (c) residential property at Unit B-X-XXVII/79 (C-C/HT), 3C Model Town Phagwara, District Kapurthala, India; and (iv) commercial property at SCO site No.151-152,

CWP No.18864 of 2015

[2]

Sector-8, Chandigarh, India, on the basis of a registered Will dated 19.02.1980, alleged to have been executed in their favour by their late father Gurdev Singh, therefore, petitioner No.1 cannot claim financial benefit by putting those properties on sale, which do not belong to petitioner No.2. It is alleged that the Family Court at Slough, vide its order dated 01.10.2014, directed the parties to jointly instruct Mr. Harpreet Giani, Barrister and/or any other advocate nominated by him to advise on the Will of late Gurdev Singh and the Court also asked for the release of the Will of Gurdev Singh entered at Serial No.563, Bahi No.13, Jild No.81, Page No.272-3 dated 19.02.1980, lying in the office of the Sub Registrar, Hoshiarpur, for a short period, to be transmitted to England for forensic inspection by the Family Court. The concerned Court had also, vide its order dated 02.02.2015, directed Mr. Harpreet Giani to file and serve his report by 4.00 p.m. on 05.10.2015. Not only this, the District Judge of the Family Court at Slough had also written a letter on 18.03.2015 to the Chief Justice of this Court, seeking his assistance in obtaining and transmission of the original Will to England before 21.09.2015 so that the Family Court may have the inspection, through a forensic expert, of the signatures of deceased Gurdev Singh. On 11.05.2015, Rohit Khanna, Advocate, alleged to have been appointed by the Family Court at Slough, vide its orders dated 01.10.2014 and 02.02.2015, made a request to the Acting Chief Justice of this Court for issuance of appropriate directions for production of the original Will of late Gurdev Singh so that it could be made available to the Family Court at Slough, to facilitate its inspection for the Court proceedings. The said

CWP No.18864 of 2015

[3]

application was returned by this Court in original to avail the remedy on the judicial side as it was not found possible to pass an order on the administrative side.

Apropos, the present petition has been filed under Article 226/227 of the Constitution of India read with Section 151 and Order 26 Rules 19, 20, 21 and 22 of the Code of Civil Procedure, 1908 (hereinafter referred to as the “CPC”), for issuance of a commission to obtain evidence of the Sub Registrar, Nawanshahar pertaining to the original Will of Gurdev Singh. It has also been prayed that proper directions may be issued to the Sub Registrar for releasing the original Will of late Gurdev Singh for further transmission to the Family Court at Slough (England) for the purpose of inspection.

Interestingly, this petition has been filed against the State of Punjab through its Chief Secretary, who has nothing to do in this matter. When the writ petition was initially filed, the petition was returned, with an objection, to the petitioners as to how the writ petition was maintainable. The writ petition was re-filed by the petitioners with an endorsement to put up as it is before the Bench for orders.

Counsel for the petitioners could not refer to any provision of law to persuade this Court to pass an order in their favour and all that has been argued is with reference to Part-III of the CPC which deals with the incidental proceedings to issue commissions. It is not a case where the petitioners require examination of the Sub Registrar to establish due registration of the Will for which commission could be issued, otherwise

CWP No.18864 of 2015

[4]

Section 78(c) of the CPC provides for the issuance of commission by the foreign Courts. It is also pertinent to mention that the Will, being a testamentary document, is not necessarily to be registered as provided under Section 18 of the Registration Act, 1908, but once it has been registered, its validity has to be proved as per Section 68 of the Indian Evidence Act, 1872, which provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness is examined for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Actually, the Family Court at Slough does not require any assistance on its own to adjudge validity of the Will as it has to be proved by petitioners No.3 and 4, who have set it up to dislodge the claim of petitioner No.1 of natural succession by petitioner No.2 to the estate of deceased Gurdev Singh, as per Section 8 of the Hindu Succession Act, 1956. As per Indian law, petitioners No.3 and 4, who were alleging that petitioner No.2 had no right in the properties of his father because of his exclusion by way of registered Will, must be in possession of the original copy of the Will as it is only the second copy of the said Will which has been retained by the office of the Sub Registrar, before whom the registration took place and entered in the Bahi/Book maintained by his office for the purpose of future reference of the Will. Thus, the burden lies heavily upon petitioners No.3 and 4 to prove the Will of their father in their favour and they are required to produce the original Will before the Court, which would not only bear the signatures of late Gurdev Singh but also of

CWP No.18864 of 2015

[5]

the attesting witnesses, who may be examined by the Family Court at Slough to determine as to whether petitioners No.3 and 4 have actually succeeded to the property of their late father Gurdev Singh or not, but there is no such procedure in the CPC or any other law, brought to the notice of the Court, by the counsel appearing on behalf of the petitioners on the basis of which the prayer made by the petitioners could be granted.

Insofar as the prayer of the petitioners for issuance of a commission is concerned, the order has to be passed for appointment of Court Commissioner by the Family Court at Slough where the proceedings are pending, adjudging validity of the Will but it cannot be issued by the Court in India where no proceedings in that regard is sub-judiced.

As regards the direction for releasing the original Will, there is no such procedure prescribed by law, therefore, the prayer made in this regard cannot be granted.

With these observations, the present writ petition is hereby dismissed, though without any order as to costs.

September 16, 2015
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(Rakesh Kumar Jain)
Judge