

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

CR No.1037 of 2013(O&M)

Date of decision:25.7.2016

Swaran SinghPetitioner

VERSUS

Davinder Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Premjit Kalia, Advocate for the petitioner.

Mr. K.S. Rekhi, Advocate for respondent No.6 and LR's of
respondent No.2.

REKHA MITTAL, J.

CM No.8178-CII of 2016

Prayer in this application is for bringing on record the legal representative of Swaran Singh - petitioner stated to have passed away on 24.08.2015.

Heard.

In view of averments made in the application supported by an affidavit of Harinder Singh s/o late Sh. Swaran Singh, the application is allowed and the person mentioned in para 3 of the application is allowed to be brought on record as legal representative of deceased-Swaran Singh (petitioner) for the purpose of present *lis*, subject to all just exceptions.

Amended memo of parties is taken on record.

CR No.1037 of 2013

By invoking Article 227 of the Constitution of India, the present petition lays challenge to order dated 19.01.2013 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Ajnala, whereby

application filed by the petitioner/plaintiff to examine handwriting expert on the basis of comparison of signatures of Bhagwan Singh (testator) and Jagtar Singh (attesting witness) on the Will dated 22.08.1983 with their sample signatures on the sale deeds dated 03.07.1984 and 20.07.1983 respectively has been dismissed.

Counsel for the petitioner has submitted that Swaran Singh son of Bhagwan Singh has filed a suit staking his claim to the suit land having been bequeathed by deceased Bhagwan Singh in favour his two sons namely Swaran Singh (petitioner) and Davinder Singh (defendant No. 1) in equal share by way of registered Will dated 22.08.1983. The petitioner was allowed to prove the Will by way of secondary evidence and he has produced on record certified copy of the Will obtained from the office of registering authority. It has also been proved that Bhagwan Singh executed sale deed dated 03.07.1984 in favour of Jarnail Singh and the same has been exhibited during the course of evidence. Another sale deed dated 20.07.1983 bearing signatures of Jagtar Singh, an attesting witness to the Will, has been proved. The attesting witnesses to the Will have died. In order to prove execution of the Will, the petitioner moved an application for comparison of signatures of Bhagwan Singh and Jagtar Singh on the Will with their sample signatures on the sale deeds dated 03.07.1984 and 20.07.1983 respectively.

It is argued with vehemence that the learned trial Court without adverting to relevance of the evidence sought to be adduced has dismissed the application primarily on the ground of delay with some unfounded reasons that cannot stand the test of judicial scrutiny. It is further argued that cost is the panacea for delay attributable to the

petitioner but that itself cannot be a ground to deny right of the petitioner to examine handwriting expert more particularly in the circumstances that the application was filed at the stage when the case was still pending for evidence of the petitioner/plaintiff and the case is still pending for evidence of the petitioner despite expiry of more than 3 years when the impugned order was passed by the trial court.

Counsel representing LR's of respondent No.2 and respondent No.6 has supported the impugned order with the submissions that as the petitioner was quite callous in filing an application at an appropriate stage of the proceedings and has failed to prove the Will in accordance with law, he is not entitled to indulgence of this Court.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

There is no dispute about the fact that proceedings initiated at the behest of petitioner Swaran Singh pertains to inheritance to the estate of Bhagwan Singh wherein the petitioner has staked his claim to half share in the suit property on the basis of testamentary succession. The suit appears to have been filed in the year 2006 and is pending for evidence of the petitioner as on date. The plea of the petitioner that the learned trial Court did not advert to relevance of evidence of expert witness on the basis of comparison of disputed signatures of the testator with his sample signatures gets substantiated on a plain reading of the impugned order. It further appears that the trial Court dismissed the application primarily on the ground that the application has been filed at a belated stage to delay the proceedings. The case has already become old and falls in the category of 'samadhan cases' and further wants to create evidence in his favour.

So far as intention of the petitioner to delay the proceedings, nothing has been submitted by counsel for the respondent as to how the petitioner would be gainful by delaying decision of the suit. As the petitioner sought comparison of the disputed signatures with sample signatures, there is no question of creating any evidence. The reasons assigned by the trial court appears to be the result of non-application of mind and the haste shown to dispose of the suit as the same was a part of cases categorized as 'Action Plan'. To the utter surprise of this Court despite there being no stay in the present proceedings, the case is still pending for recording of evidence of the petitioner/plaintiff.

In view of the above, the impugned order cannot be allowed to sustain and liable to be set aside. Ordered accordingly. However, the matter is remitted to the trial Court for decision on the application afresh in accordance with law.

Nothing stated in this order shall be construed as an expression of opinion on merits of the application. The trial court is directed to dispose of the application within a period of one month from the next date fixed in the case as the suit filed in the year 2006 is still pending for evidence of the petitioner/plaintiff.

Disposed of accordingly.

JULY 25, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no