

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

CR No.2954 of 2012(O&M)

Date of decision:1.3.2016

Swaran Kaur and another

....Petitioners

VERSUS

Sukhwinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Krishan Sehajpal, Advocate for the petitioners.

Mr. S.S. Hira, Advocate for respondent No.1.

REKHA MITTAL, J.

By invoking Article 227 of Constitution of India, the present petition has been directed against an order dated 19.04.2012 (Annexure P-4) passed by Civil Judge (Junior Division), Jalandhar, dismissing the application filed by the petitioners/defendants to lead additional evidence to prove the registered Will dated 03.11.2004.

Counsel for the petitioners contends that Sukhwinder Kaur - respondent No.1 has filed a suit claiming to be owner in possession of the suit property on the basis of a Will. The petitioners/defendants filed the written statement raising a specific plea that Hardit Ram, erstwhile owner of the property, executed a Registered Will in favour of his three sons namely Sarwan Singh, Satpal and Harbans Lal on 03.11.2004. At the time of leading evidence by the petitioners, the original Will was not traceable and a copy thereof was marked 'A' and evidence was closed. It is further submitted that counsel for the petitioners did not tender proper legal advice

to file an application for proving the Will by way of secondary evidence and adduce evidence to prove the Will in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872. The petitioners, therefore, were rendered helpless to prove the registered Will propounded by them and counter claim of respondent No.1. It is further argued that a serious prejudice is likely to be caused in case the petitioners are not permitted to prove the registered Will dated 03.11.2004.

Counsel for the contesting respondent - Sukhwinder Kaur, daughter-in-law of Hardit Ram (since deceased), has supported the impugned order with the submission that as the petitioners have failed to prove that evidence sought to be produced by way of additional evidence could not be adduced despite exercise of due diligence, they cannot be allowed to re-open the matter at the stage, the parties have already concluded their evidence.

I have heard counsel for the parties and perused the records.

It is an admitted position of the case that in the written statement filed by the petitioners, they had taken a categorical stand that deceased-Hardit Ram executed a Registered Will in favour of his three sons namely Sarwan Singh, Satpal and Harbans Lal. Swaran Kaur-petitioner No.1, widow of Satpal son of Hardit Ram (since deceased) tendered into evidence her affidavit by way of examination-in-chief and reiterated her version in regard to the registered Will left behind by the deceased. It has further been stated that Will dated 19.05.2004, basis of the suit filed by respondent No.1/plaintiff, stands cancelled vide Will dated 03.11.2004. Indisputably, the petitioners did not seek permission of the Court to prove

the Will by way of secondary evidence by obtaining certified copy thereof from the office of the Registrar concerned. They also did not produce the scribe and the attesting witnesses to prove the Will, in accordance with law. It appears that the petitioners did not get proper legal advice and for that reason, they missed the opportunity to prove their case in view of the defence raised in the written statement. The mere fact that the petitioners did not adduce evidence to prove the Will in question at an appropriate stage of the proceedings can neither be allowed to enure to the benefit of the contesting respondent nor to deprive them of their right to claim ownership of the suit property on the basis of testamentary succession. Any loss to the respondent on account of delay attributable to the petitioners can well be compensated by imposing costs, as cost is panacea for delay. The learned trial Court has failed to appreciate the serious repercussions and consequences for the petitioners in case they are not permitted to lead additional evidence to prove the original Will, that is stated to be found now. Under these circumstances, the order passed by the trial Court cannot be allowed to sustain and set aside accordingly.

In view of what has been discussed hereinabove, the petition is allowed; the impugned order is set aside and the petitioners are permitted to examine the scribe (deed writer) and attesting witnesses of the Will but subject to the condition that they would get one effective opportunity for examination of the witnesses and they would ensure presence of the witnesses before the Court concerned on the date to be fixed for the purpose, subject to payment of costs of Rs.10,000/- to contesting respondent No.1

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which shall be deposited in the trial Court well before the date fixed for their evidence and shall be released in favour of respondent No.1.

Respondent No.1 shall be at liberty to rebut the additional evidence to be adduced by the petitioners.

MARCH 1, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE