

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

CR No.2951 of 2014 (O&M)

Date of decision: 08.02.2016

Kuldip Kaur and others	...	Petitioners
	versus	
Iqbal Singh and others		Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. H.K. Brinda, Advocate, for the petitioners.
 Mr. Sanjay gupta, Advocate, for respondent Nos. 1 & 2.

K.Kannan, J. (ORAL)

The plaintiff has filed the suit claiming a right to the property of a mother as on intestate succession and has stated that the Will propounded by the defendant is fraudulent. There is an issue framed of whether the Will propounded by the defendant is genuine and validly executed and attested. During the course of trial, one of the plaintiffs was reported to have admitted to have given a statement that the Will was genuine but later withdrew the same. The plaintiff has not concluded his evidence and after taking more than 20 opportunities, filed an application for examination by an expert which the Court has allowed now. The defendant is aggrieved that the petitioner is trying to discredit the Will even before the defendant has undertaken the burden of proof of establishing the Will.

Section 68 of the Evidence Act makes a rule of exception to a Will as a document where a proof is necessary even when not denied, for, it is another way of saying a Will would be required to be proved only by the propounder and not required to be proved as fraudulent by a person who denies it. Consequently, even a plea by the plaintiff that the mother has not executed the Will will require to be examined only after the propounder brings his own version and if the person who

denies the Will figures as a plaintiff, he/she/ they will have a right of rebuttal after the evidence is given by the propounder. Even before a document is exhibited by a person that propounds it, if any evidence is sought to be given, it can cause grave prejudice to the propounder. An expert testimony is bound to pre-judge an issue and bound to influence the mind of the Court. The Court will allow for the plaintiff to give further evidence on his own claim and await his opportunity at the time of rebuttal to give such evidence as regards the invalidity of execution or attestation or any aspect that goes against the validity of the Will.

There is also an argument that the issue is framed as regards the mutation ordered on the basis of Will and placing the burden of proof on the plaintiff to establish the invalidity of the order. It requires no evidence more than the fact that if the Will is true, the mutation ordered is correct. It is purely consequential to the proof of Will that would be required to be given by the defendant and it requires no affirmative evidence. The burden is very light and ought to be merely taken as consequential to the proof as regards the Will propounded by the defendant. The plaintiff's claim to priority to prove the invalidity of the Will on the basis of this issue is irrelevant and is rejected.

The order allowing for the expert testimony to be given is erroneous and it is set aside. The revision petition is allowed.

(K.KANNAN)
JUDGE

08.02.2016

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