

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

**CR No.3708 of 2016 (O&M)
Decided on: 28.07.2016**

Banarsi Dass (deceased) through his legal heirs

....Petitioner

Versus

Rajiv Nandra and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Hitesh Kaplish, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 25.04.2016 (Annexure P-1) dismissing application of the petitioner for additional evidence.

Counsel for the petitioner – Banarsi Dass (since deceased) now represented by his legal representatives has submitted that a suit for possession by way of partition along with prayer for permanent injunction has been filed by respondents No.1 to 7 (successors-in-interest of Sh. Krishan Lal) whereby they have claimed 1/4th share in the disputed house being legal heirs of Sh. Chunni Lal (since deceased) who was allotted the disputed property by Government of India in the Department of Rehabilitation in the year 1958 and on 17.05.1971. In the said suit, the petitioner has been arrayed as defendant No.1 along with various other defendants. The petitioner filed the written statement raising a specific plea that Sh. Chunni Lal executed a legal and valid Will dated 13.11.1979 in favour of his wife Smt. Shanti Devi. Sh. Chunni Lal died on 15.04.1980 and thereafter, Smt. Shanti Devi being

owner in possession of the suit property sold the same to the petitioner for a valuable consideration vide registered sale deed in the year 1992. It is argued that evidence of the petitioner was closed by order of the Court but he filed Civil Revision No.5839 of 2012 that was allowed by this Court on 03.10.2012. Later, the petitioner filed an application for additional evidence to examine Sh. Bagirath Lal son of Sh. Jagan Nath resident of Agra (U.P.). The application was dismissed by the trial Court which led to filing of Civil Revision No.7245 of 2012 at the behest of the petitioner. During pendency of the said petition, Sh. Bagirath Lal passed away and as a result, the petition was rendered infructuous and disposed of accordingly vide order dated 25.08.2015. It is argued with vehemence that as both the attesting witnesses of the Will namely Joginder Pal Hans and Sh. Bagirath Lal as well as its scribe Sh. Dharam Parkash Sandhir have passed away, the petitioner filed the instant application for examination of Surinder Singh an acquaintance of Sh. Chunni Lal to prove attestation of the Will by its testator and Ajay Kumar son of Sh. Ram Lubhaya grandson of Sh. Joginder Pal Hans to prove signatures of Sh. Joginder Pal Hans. It is further argued that the learned trial Court dismissed the application without appreciating in right perspective that a serious prejudice is likely to be caused to the petitioner in case he is not permitted to prove the Will in accordance with law when otherwise rules of procedure are required to be applied to enhance justice and cost is the panacea for delay attributable to the petitioner.

I have heard counsel for the petitioner perused the paperbook, various annexures appended with the petition as well as

records of CR No.5839 of 2012 and No.7245 of 2012 earlier decided by this Court.

It is an undisputed position of the case that evidence of the petitioner was closed by order dated 14.09.2012 except cross-examination of Raj Kumar DW-1 and Banarsi Dass DW-2. The said order was challenged before this Court in CR No.5839 of 2012. In para 4 of the petition, a plea was raised that the petitioner in order to prove his case had deposited diet money for calling the witnesses of the Will as well as the Will Writer as the same were reported to have died, so the petitioner wanted to call other witnesses and evidence to prove the Will. This Court without notice to the contesting respondents/plaintiffs, allowed the petition with the following observations:-

“Consequently, it is a fit case where another opportunity could be provided to the petitioner to conclude his evidence. However, the delay in concluding the evidence could be compensated with costs.

Resultantly, this petition is accepted; impugned order is set-aside and one effective opportunity is granted to the petitioner to conclude his entire evidence, subject to payment of Rs.10,000/- as costs.”

It appears that pursuance to the order passed by this Court, the petitioner adduced some more evidence besides cross-examination of Raj Kumar DW-1 and Banarsi Dass DW-2. Once the petitioner had approached this Court for examining certain witnesses to prove the Will after knowing that the witnesses and scribe of the Will have already passed away, failure of the petitioner to avail that opportunity does not entitle him to file applications one after the other for adducing some

more evidence despite his knowing well from day one that in order to be successful in his defence, he is enjoined upon to prove the Will in accordance with law. There is not even a whisper as to why the petitioner could not examine Sh. Bagirath Lal despite an opportunity having been provided to him by taking into consideration allegations raised in para 4 of CR No.5839 of 2012. In the given facts and circumstances, it can safely be concluded, as has been rightly held by the trial Court, that the petitioner wants to keep the matter alive one way or the other and delay the proceedings as he has claimed himself to be in possession of the suit property that was sought to be partitioned by the respondents/plaintiffs claiming themselves to be legal heirs of deceased Chunni Lal (erstwhile owner of the suit house). In this view of the matter, I do not find any reason to intervene in the impugned order in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed. No order as to costs.

28.07.2016

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No