

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

**CR No.3912 of 2016 (O&M)
Date of Decision:28.11.2016**

Ram Murti

.....Petitioner

Versus

Pal Chand and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jitender Malik, Advocate
for the petitioner.

Mr. Ajit Malik, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 16.03.2016 passed by Civil Judge (Junior Division), Kurukshetra vide which application for additional evidence filed by the petitioners was dismissed.

[2]. Plaintiff-petitioner filed a suit for declaration and permanent injunction as a consequential relief against the respondents to the effect that the plaintiff-petitioner and respondents-defendant No.5 and 6 are the daughters of Bhagirath (deceased). Bhagirath executed a Will in favour of

respondents/defendants No.1 to 4 on 21.07.2011. Mutation No.5383 was also sanctioned. Plaintiff assailed the aforesaid Will along with mutation being illegal, null and void.

[3]. During pendency of the suit, plaintiff-petitioner filed an application for additional evidence to examine two witnesses from the office of Superintendent Mohandai Oswal Hospital, Ludhiana regarding treatment of his father Bhagirath and from M.M. Medical College and Hospital, Mullana, Ambala to prove that the father of the petitioner was a patient of Cancer. The aforesaid witnesses were claimed to be material witnesses for just adjudication of the case.

[4]. The application was contested by the respondents on various grounds. The application was rejected by the trial Court vide order dated 16.03.2016.

[5]. Plaintiff-petitioner has assailed the said order on the ground that the property was a joint Hindu family and ancestral property. Bhagirath was the Karta of the joint Hindu family and had no right to execute any Will in favour of some of the legal representatives. Secondly, Bhagirath was not of sound disposing mind and was not in a position to think good or bad. Defendants No.1 to 4 by taking advantage of his ill health, got the Will executed in their favour on the basis of fraud as Bhagirath was taken to Tehsil Office on the pretext of extension

of old age pension. Thirdly, Bhagirath was suffering from Cancer. Precisely for the aforesaid grounds, the additional evidence was sought to be adduced.

[6]. Trial Court dismissed the application on the ground that for proving that Bhagirath was suffering from Cancer, the medical records of late Bhagirath could have been appreciated. Plaintiff did not mention about the relevancy of examining the doctors. For proving the factum of Cancer, examination of doctors was not considered to be relevant as the factum of Cancer could have been proved by the records. Since there was nothing mentioned in the application that late Bhagirath was not in a fit state of mind to execute the Will, therefore, proving the same by means of examining doctors was not considered to be justified by the trial Court. Secondly, trial Court had also observed that the deceased was suffering from Throat Cancer and that did not affect on the mental condition of deceased Bhagirath. Defendants have already attached the original record of late Bhagirath, therefore, the application for leading additional evidence was considered to be not proper in the given situation. Lastly, it was observed that the application came to be filed at a belated stage as the evidence which was already within knowledge of the plaintiff could have been brought on record in the beginning.

[7]. I have considered the arguments raised by learned counsel for the parties.

[8]. The examination of doctors besides proving the factum of Cancer would also prove the physical condition of the patient whether he was fit enough to execute the Will in question or not? Dr. Gurinder Jit Singh, MBBS, MDC Dermatology, Medical Superintendent, Ludhiana, Mohan Lal Oswal Hospital, G.T. Road, Sherpur Bypass, Ludhiana and Dr. Vijay (V.K) Kaushal, Medical Director, Mullana Medical with Dr. L.N. Garg, M.M. Medical College and Hospital, Mullana, Ambala are necessary to prove the factum of ailment of deceased Bhagirath, besides deposing about his physical state of health whether he was in a position to depose and competent enough to execute the Will in question? At this stage, no such firm finding can be recorded whether depositions of these doctors would suffice to meet out the projected grounds of the plaintiffs, but certainly the piece of evidence which is sought to be brought on record by way of additional evidence would go in a way to help the Court for just and proper decision of the case.

[9]. It cannot be opined conclusively at this stage whether mental condition of deceased Bhagirath had any connectivity or nexus in the outcome of decision of the case. The nature of ailment and attending circumstances would be appreciated by

the trial Court after proper evaluation of evidence of the doctors. The procedural lapse can be remedied by allowing the plaintiff to lead additional evidence in respect of something which could not be brought on record at the relevant time.

[10]. It is a settled principle of law that if something remained obscure can be filled in by way of additional evidence. Plaintiff-petitioner not only wanted to bring factum of Bhagirath having ailment of Cancer, but also wanted to demonstrate that he was not in a fit state of mind at the relevant time. All these questions cannot be answered at this stage of litigation, lest it may prejudice the case of either sides.

[11]. Without forming any opinion on ultimate merits of the case, this Court considers that the additional evidence can be allowed to be led in the interest of justice. It is only thereafter, the Court would be in a position to appreciate the controversy on merits. Even otherwise, the additional evidence would definitely enable the Court to decide the case in its right perspective.

[12]. In view of aforesaid, this Court considers that the additional evidence sought to be adduced by the plaintiff should be allowed in the interest of justice. Therefore, impugned order dated 16.03.2016 passed by Civil Judge (Junior Division), Kurukshetra is set aside. This revision petition is accordingly

allowed. Follow up action be taken by the trial Court in accordance with law.

28.11.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No