

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

**CR No.4300 of 2016
Decided on: 13.07.2016**

Raj Kumar (since deceased) through his LR Nisha Rani
....Petitioner
Versus
Bharat Bansal and others
....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sherry K. Singla, Advocate
for the petitioner.

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

Nisha Rani, daughter of Raj Kumar (since deceased) impleaded as one of legal representatives of Raj Kumar has challenged the order dated 23.05.2016 (Annexure P-9) passed by the Additional Civil Judge (Sr. Division), Talwandi Sabo to the extent that she is not permitted to prove Will despite having been provided with an opportunity to adduce evidence while disposing of application (Annexure P-3).

Counsel for the petitioner would contend that Bharat Bansal – respondent No.1 has filed a suit for recovery against Sh. Subhash Chander and others including Raj Kumar – defendant No.5 now represented by his LRs Smt. Saroj Rani and others including the present petitioner. The petitioner was not permitted to adduce evidence and an application (Annexure P-3) was filed for permitting her to adduce evidence wherein it has been alleged in para 4 that the petitioner

has not inherited property of deceased – Raj Kumar, as Raj Kumar executed a Will in favour of Smt. Saroj Rani his wife, therefore, she has no liability to discharge, outstanding against Sh. Raj Kumar. It has further been argued that as the petitioner has been given an opportunity to adduce evidence, the trial Court, at this stage of the proceedings, was not competent to decide as to what evidence can be adduced by the petitioner. In addition, it is submitted that even if some evidence is adduced by a party that is beyond pleadings, the said fact has to be considered at the time of final disposal of the suit on merits. Another submission made by counsel is that no prejudice would be caused to the respondent/plaintiff or co-defendants of the petitioner in case she is permitted to adduce evidence even in regard to the Will executed by deceased – Raj Kumar. It is argued that adducing of evidence by the petitioner *qua* inheritance to the estate of Sh. Raj Kumar is necessary for complete and effective adjudication of the matter in controversy as to who amongst the LRs of Raj Kumar is liable to discharge any liability fastened against the deceased. The last submission made by counsel is that the mere fact that no such Will finds reference in the written statement filed by the petitioner cannot be allowed to stand in the way of the petitioner to adduce relevant evidence including evidence to prove the Will left behind by the deceased. In support of his contention, he has referred to a judgment of this Court “**Jasmal Kaur and others vs Jagmohan Singh and others**”, CR No.414 of 2012 decided on 26.11.2014.

I have heard counsel for the petitioner and perused the

paperbook particularly the various annexures appended with the petition.

The petitioner filed the application (Annexure P-3) at the stage when the case was fixed for arguments. In para 6 of the application, there is a reference that she be given an opportunity to prove the Will executed by Raj Kumar in favour of Saroj Rani, his widow who has inherited movable and immovable property of Raj Kumar. As soon as the petitioner has raised a specific plea in regard to her right to adduce evidence to prove the Will executed by Raj Kumar in favour of Saroj Rani, the trial Court would have failed in its duty if it had not adverted to contention of the petitioner with regard to her right to adduce evidence to prove the Will. In this view of the matter, I do not find any merit in the contention that the trial Court while deciding the application (Annexure P-3) either should not have adverted to the question of entitlement of the petitioner to adduce evidence to prove the Will or the said fact was required to be left to be decided at the time of final disposal of the suit.

The contention of the petitioner that question of relevance of evidence or evidence beyond pleadings cannot be decided at the time of adducing evidence is mis-conceived and merits rejection. It is an obligation of the Court not to permit a party to adduce irrelevant evidence or evidence beyond pleadings in order to avoid wastage of time, energy and effort of all the stakeholders including the Court. No useful purpose would be served by permitting a party to adduce evidence beyond pleadings that would be liable to be discarded at the

time of final disposal of the suit.

The petitioner filed the written statement along with defendants No.5(a) to 5(c). The LRs of Raj Kumar admitted claim of the plaintiff. In para 6 of the written statement, a plea was raised that all the defendants are jointly and severally liable to pay to the plaintiff. No such plea was raised by the petitioner that she being one of the LRs of Raj Kumar has no liability to pay the suit amount as she has not inherited any property left behind by the deceased. Not only this, the application filed by the petitioner for adducing evidence does not make reference to the date, month and year of the Will much less a copy thereof appended with the application. It appears to the Court and has rightly been noticed by the trial Court that the petitioner is talking in air and sought adducing evidence *qua* Will without any pleadings and particulars.

In view of the peculiar facts and circumstances of the present case, the petitioner cannot derive any advantage to her contention from the judgment ***Jasmal Kaur and others case (supra)***.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed *in limine*. No order as to costs.

13.07.2016
yakub

(REKHA MITTAL)
JUDGE