

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

**CR No.5039 of 2016
Date of Decision: 07.11.2016**

Gurdeep Singh

.....Petitioner

Versus

Mohinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunil Agnihotri, Advocate
for the petitioner.

Mr. Satbir Rathore, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.(Oral)

[1]. In this revision petition, petitioner has assailed order dated 06.07.2016 passed by Additional Civil Judge (Senior Division), Dasuya whereby application under Order 26 Rule 1 read with Section 151 CPC for appointment of Local Commissioner for recording statement of Mehanga Singh was declined.

[2]. Plaintiff-petitioner filed a suit for declaration to the effect that Will dated 12.09.1990 executed by Amar Kaur in favour of plaintiff was lawful and has not been revoked by the testator. Further Will dated 19.12.2008 was claimed to be illegal, invalid

and shrouded with suspicious circumstances. Consequent mutation on the basis of said Will dated 19.12.2008 was also claimed to be null and void.

[3]. Learned counsel for the petitioner submitted that plaintiff has already deposited the process fee and diet money of the witnesses namely Chanan Singh, Ex. Sarpanch and Mehanga Singh, Numberdar of village Dhuggal Kalan. The evidence of aforesaid witnesses could not be completed as the record of the case was summoned by the Appellate Court. Aforesaid Chanan Singh has already expired. Mehanga Singh is almost a bed ridden patient and is unable to stand and walk. Aforesaid Mehanga Singh is the attesting witness to the Will dated 12.09.1990 and his testimony has been claimed to be very essential for just decision of the case.

[4]. Prayer of the petitioner was declined by the trial Court on the premise that Mehanga Singh was not bed ridden and no evidence was produced on record to show incapacity of Mehanga Singh to come to the Court.

[5]. I have heard learned counsel for the parties.

[6]. Age of Mehanga Singh is not in dispute. Medical certificate and photographs have been placed on record as Annexues P6 and P7. The identity of Mehanga Singh viz-a-viz the photographs Annexure P7 is not disputed. It appears from

the photographs that he is an old and ailing person and is unable to move about.

[7]. In view of aforesaid, this revision petition is allowed. Impugned order dated 06.07.2016 passed by Additional Civil Judge (Senior Division), Dasuya is set aside. Let Local Commissioner be appointed for recording statement of Mehanga Singh in accordance with law.

07.11.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No