

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

**CR No.5876 of 2015
Decided on: 20.05.2016**

Amar Chand

....Petitioner

Versus

Vikramjit Panesar

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Raj Kapoor Malik, Advocate
for the petitioner.

Mr. Pawan Attri, Advocate
for the respondent.

- 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.

The present petition has been directed against order dated 02.09.2015 (Annexure P-8) passed by the Civil Judge (Jr. Division), Kaithal, dismissing application filed by the petitioner/defendant for framing of additional issues *qua* the Will dated 30.12.2003 set up by the respondent/plaintiff on the basis whereof he has claimed himself to be owner of the suit property.

Counsel for the petitioner contends that as the respondent/plaintiff has claimed ownership of the suit property on the basis of Will dated 30.12.2003 and the petitioner/defendant has controverted the plea with the averments that the Will is illegal, void and is a result of fraud, it is necessary to frame additional issues *qua* the

Will in question but the Court below has dismissed the application primarily on the ground that the application has been filed at a belated stage. It is further submitted that in view of the provisions of Order 14 of the Code of Civil Procedure, a specific issue is required to be framed on each disputed question of fact asserted by one party and denied by the other. Another submission made by counsel is that in case issue *qua* the Will is framed, the petitioner will not ask for recalling of the witnesses already examined by the respondent/plaintiff, therefore, delay in filing the application otherwise cannot be taken prejudicial to the rights of the respondent/plaintiff.

Counsel for the respondent/plaintiff, on a pointed query raised by the Court, has submitted that though the respondent has filed the suit for mandatory and permanent injunction alleging that the petitioner/defendant is a licensee in the suit property and is liable to vacate the same but still he seeks adjudication of question of title to the suit property on the basis of Will 30.12.2003. It has further been argued that Issue No.1 already framed by the trial Court would be sufficient to decide the question of Will as well.

I have heard counsel for the parties, perused the paperbook and the impugned order.

As the respondent/plaintiff has claimed ownership of the suit property on the basis of registered Will dated 30.12.2003 and the petitioner/defendant has denied any such Will purported to be executed by Sh. Lal Chand son of Mathura Dass with the plea that the Will is the result of fraud, a specific issue is required to be framed with regard to the Will in question to determine question of ownership of the suit

property. Accordingly, keeping in view the pleadings of the parties, the following issues are framed:-

***1-A.** Whether Sh. Lal Chand executed a valid and genuine Will dated 30.12.2003 in favour of the plaintiff? OPP.*

***1-B.** Whether the Will dated 30.12.2003 is illegal and void being the result of fraud? OPD.*

In view of what has been discussed hereinabove, the petition stands disposed of in the aforesaid terms. However, the petitioner shall not be entitled to recall the witnesses already examined by the respondent/plaintiff for the purpose of further cross-examination on the basis of framing of additional issues.

20.05.2016
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(REKHA MITTAL)
JUDGE