

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

**CR No.6633 of 2015
Decided on: 24.02.2016**

Daljit Kaur and others

....Petitioners

Versus

Gurdeep Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Ms. Rajwinder Kaur, Advocate
for the petitioners.

Mr. Rajbir Singh, Advocate
for the respondent.

REKHA MITTAL J. (Oral)

By invoking Article 227 of the Constitution of India, the present petition lays challenge to order dated 23.09.2015 passed by the Civil Judge (Junior Division), Patiala, dismissing an application filed by the petitioner for adducing additional evidence.

Counsel for the petitioners contends that the petitioners being successors-in-interest of Sh. Bhupinder Singh son of Sitawanti wife of Sujan Singh filed a suit for declaration and permanent injunction in respect of house situated at House No.98, Dukhniwaran Camp, Sirhind Road, Patiala, primarily on the basis of Will dated 26.05.1998 executed by the erstwhile owner Smt. Sitawanti. The petitioners adduced their evidence and the respondent in his cross-examination has admitted thumb-

impression of the testator on the Will as well as on affidavit. The petitioners have produced the original registered Will on record but as Sh. Mohit Kapoor, Advocate, counsel for the petitioners did not advise them to examine the scribe, attesting witnesses of the Will and an official from the office of Sub-Registrar, Patiala, to prove the factum of registration, they could not adduce evidence necessary to prove the Will in question in accordance with the provisions of Section 68 of the Indian Evidence Act. It is further argued that a serious prejudice is likely to be caused to the petitioners in case they are not permitted to examine the aforesaid witnesses to prove the Will.

Counsel for the respondent has submitted that Ms. Sitawanti did not have cordial relations with Sh. Bhupinder Singh, predecessor-in-interest of the petitioners, therefore, there was no occasion for her to execute the Will in favour of Sh. Bhupinder Singh. In the year 1989, Ms. Sitawanti got published in a newspaper that she had dis-owned her son Bhupinder Singh and she will not be responsible for his liabilities. Sitawanti executed a registered Will dated 24.04.1989 in favour of Gurdip Singh-respondent to the exclusion of Sh. Bhupinder Singh. It has been proved on record that Sitawanti executed the registered Will dated 24.04.1989 propounded by the respondent. It is vehemently argued that in case the petitioners are allowed to examine witnesses by way of additional evidence it would amount to permitting them to

lead evidence in rebuttal that they were required to adduce in affirmative. Another submission made by counsel is that the instant application has been filed to fill up the gaps, *lacuna* in the case, not permissible in law, therefore, the order passed by the trial Court does not require intervention.

I have heard counsel for the parties and perused the records.

There is no denial that the original registered Will dated 26.05.1998 has already been produced on record and the said Will is the basis of the suit claiming $\frac{1}{2}$ share in House No.98, Dukhniwaran Camp, Sirhind Road, Patiala. As the petitioners have staked their ownership to the extent of $\frac{1}{2}$ share in the suit property on the basis of Will in question purported to be executed by its erstwhile owner, a serious prejudice would be caused to the petitioners in case they are not permitted to adduce evidence to prove the Will in question in accordance with the provisions of Section 68/69 of the Indian Evidence Act. There is no doubt about the fact that the petitioners were required to adduce the evidence at the stage of leading their evidence in affirmative but failure of the petitioners to lead that evidence cannot be allowed to enure to benefit of the respondent as technicalities or procedural delay cannot be allowed to stand in the way of substantial justice. The petitioners may be remiss in their obligation to examine the

witnesses at an appropriate stage of the proceedings but at the same time as the petitioners have set-up the registered Will from the very inception of the litigation, the petitioners cannot be denied of their right to prove the Will in accordance with law. As a result, the impugned order cannot be allowed to sustain and accordingly set-aside.

For the foregoing reasons, the petition is allowed, the application filed by the petitioners for additional evidence is allowed subject to the condition that the petitioners shall get one effective opportunity to adduce additional evidence and they would ensure presence of the witnesses to be examined by way of additional evidence at their own responsibility on the date to be fixed by the trial Court, subject to payment of costs of Rs.10,000/- to the respondent.

(REKHA MITTAL)
JUDGE

24.02.2016

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