

CR-7078-2015(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-7078-2015(O&M)

Date of decision : 08.02.2016

Jagteshwar Singh

... Petitioner

Versus

Gurtej Singh and others

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms.Ekta Thakur, Advocate
for the petitioner.

Mr.A.S.Narang, Advocate
for respondents No.1 & 2.

REKHA MITTAL. J.

The present petition filed under Article 227 of the Constitution of India directs challenge against order dated 06.10.2015 (Annexure P1) passed by the Civil Judge (Junior Division), Chandigarh dismissing the application under Order 18 Rule 4 (2) of the Code of Civil Procedure (in short 'CPC') read with Sections 137 and 138 of the Indian Evidence Act for re-examination of PW1 and application for obtaining opinion from Central Forensic Science Laboratory, Chandigarh (in short 'CFSL') regarding Will dated 09.08.2007.

Counsel for the petitioner contends that the petitioner has claimed ownership to the extent of 50% in House No.742, Sector 8-B, Chandigarh on the basis of registered Will dated 09.08.2007 executed by

his grandmother Smt.Bachint Kaur wife of Bhagwan Dass and challenge has also been laid to gift deed by respondent No.1 in favour of his wife on the basis of power of attorney which stood cancelled by Smt. Bachint Kaur before execution and registration of the gift deed. To prove the Will dated 09.08.2007, the petitioner examined Sh.R.K.Bhusrt, deed writer and scribe of the Will in question. He tendered into evidence his affidavit by way of examination-in-chief but during his cross-examination, he had stated that *"I have not been shown alleged Will today."* It is argued that ambiguity which has arisen during cross-examination of PW1 is required to be clarified by re-examining the witness and showing him the Will in question lying on the file. It is further argued that in case the petitioner is not permitted to re-examine the witness, it may cause serious prejudice to his right at the time of final disposal of the suit.

Another application has been filed by the petitioner for obtaining opinion of an expert from CFSL, Chandigarh if the Will in question is the original document or the same is a copy of the Will as the respondents have raised an issue in this regard.

Counsel for the respondents would submit that earlier the petitioner filed an application for leading additional evidence to examine Ashwani Kumar son of Ashok Kumar (since deceased), an attesting witness of the alleged Will with an intent to fill up gap and lacuna left in the case when Raj Kumar son of said Ashok Kumar was examined as PW6. It was one of the plea in the said application that despite the fact

that original registered Will dated 09.08.2007 is on the Court file and exhibited as P1, Raj Kumar PW6 and Mahabir son of Mehar Chand PW7 (Mehar Chand is the other attesting witness of the Will) have stated in the cross-examination that they did not see the original Will either in the Court or outside. An application filed by the petitioner for additional evidence was dismissed by the trial Court vide order dated 22.07.2015 and the revision petition preferred against the said order has been dismissed by this Court vide order dated 09.09.2015 passed in ***CR-5893-2015 “Jagteshwar Singh Vs. Gurtej Singh and others.”*** It is further argued that as the petitioner did not become successful in his effort to examine Ashwani Kumar son of late Ashok Kumar by way of additional evidence, he filed the instant application for recalling the deedwriter R.K.Bhusrt. According to counsel, R.K.Bhusrt in his affidavit Ex.PW1/A filed by way of examination-in-chief is conspicuously silent about his having seen the Will in question much less the said document being marked or exhibited in his statement. It is further argued that as the witness has not stated in his examination-in-chief that he had seen the Will in dispute at the time of preparing his affidavit, his statement during cross-examination that he has not been shown the alleged will today does not require any clarification by invoking the provisions of Order 18 Rule 4 CPC. It is further argued that the present application is another attempt on the part of the petitioner to fill up the gap and lacunae left in the case and the same is not permissible being abuse and misuse of process of law.

With regard to the application for seeking opinion from CFSL, Chandigarh, it is argued that the petitioner cannot be permitted to use the process of the Court for collecting evidence as it is for the petitioner to prove the Will in question, to substantiate his entitlement to the suit property.

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

Counsel for the petitioner has not denied that earlier the petitioner filed an application for additional evidence with the same purpose to achieve by examining Ashwani Kumar son of late Ashok Kumar as Raj Kumar son of late Ashok Kumar during his cross-examination had stated that he had not seen the original Will either in the Court or outside. When the petitioner failed in his effort to examine Ashwani Kumar son of late Ashok Kumar by way of additional evidence, he filed the instant application for recalling the deed writer for seeking clarification. As has been rightly argued by counsel for the respondents that statement of R.K. Bhusrt PW1 in his examination-in-chief is conspicuously silent if he had seen the Will in question at the time of his examination in the Court, there is no occasion for seeking any clarification from the witness by recalling him in exercise of jurisdiction under Order 18 Rule 4 CPC, to be exercised by the Court if there is an ambiguity in the statement of a witness and needs clarification by the Court. In this context, reference can be made to judgment of the Hon'ble Supreme Court of India ***K.K.Velusamy Vs. N. Palanisamy AIR 2011 SC***

1000. In this view of the matter, I find force in the contention of the respondents that present application filed by the petitioner is nothing but another attempt to cover up the lacuna left during examination of Sh. R.K. Bhusrt. That being so, I do not find any error much less illegality in the impugned order rejecting prayer of the petitioner for recalling R.K. Bhusrt PW1.

With regard to the application for seeking an opinion from the CFSL, Chandigarh if the Will on record is the original or a copy, it is for the petitioner to prove his case in accordance with law and he cannot seek assistance of the Court for collecting evidence for him. However, the Court is always at liberty to seek an opinion of an expert body if it is necessary for fair and just decision of the case. Under these circumstances, no fault can be found in the order rejecting prayer for seeking opinion of CFSL in regard to the Will in question.

For the foregoing reasons, finding no merit, the petition is dismissed. No order as to costs. Nothing stated in this order shall prejudice adjudication of the case on its merits.

February 08, 2016.
Davinder Kumar

(REKHA MITTAL)
JUDGE