

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1327 of 2017 (O&M)
Date of decision: 22.02.2017

Tejinder Singh

... Petitioner

Vs.

Jagbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Abhishek Singla, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

By way of impugned order dated 02.02.2017, learned trial Court dismissed the application of the petitioner-defendant No.11, seeking amendment in the written statement.

Heard learned counsel for the petitioner.

It is a matter of record and not in dispute that the plaintiffs-respondents No.1 and 2 filed the suit for declaration on the basis of Will dated 06.04.1988. Trial had already commenced. Plaintiffs concluded their evidence. Thereafter, defendants had already availed about 12 opportunities for leading their evidence. An undertaking was given on behalf of the defendants for conclusion of their evidence. It was at this belated stage that the application under Order 6 Rule 17 of the Code of Civil Procedure came to be filed on behalf of defendants No.11 and 13 for setting up the Will dated 25.02.1979, executed by the same person who executed the later Will dated 06.04.1988, set

up by the plaintiffs. Under these circumstances, the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld.

The Will dated 25.02.1979, if any, was there, as a matter of fact, was in the knowledge of the defendants right from day one. Had this plea, sought to be raised by the defendants in their written statement by way of amendment at this belated stage, been true, the first occasion available to introduce this Will was at the time of filing the written statement. However, they failed to do so, for the reasons best known to them. Further, the petitioner has failed to give any reasonable explanation in this regard, as to why this plea could not be raised at an earlier point of time. It is also pertinent to note here that once the plaintiffs have already set up a later Will dated 06.04.1988, the earlier Will dated 25.02.1979 sought to be introduced by the defendants at this stage, already stood superseded by the Will dated 06.04.1988, which is already the bone of the contention between the parties. It also goes without saying that once the plaintiffs are propounders of Will dated 06.04.1988, it would be for the plaintiffs to prove the said Will. Petitioner is not going to suffer any prejudice, by passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by the learned trial Court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction. In fact, the impugned order has been found based on sound reasons and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

22.02.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No