

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Civil Revision No.2751 of 2016 (O&M)
Date of decision: May 15, 2017

Surinder Pal

...Petitioner

Versus

Jagdish Chander and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Kirpal Singh Thakur, Advocate for the petitioner.
Mr. B.D. Sharma, Advocate for respondent No.1.

Rajan Gupta, J.

Present revision petition is directed against the order dated 29.03.2016, passed by the trial court, whereby application moved by the petitioner for framing additional issue has been rejected.

Mr. Chadha, learned senior counsel for the petitioner argued before the court that the trial court erred in not framing any issue regarding the codicil relied upon by the plaintiff, thus, no evidence could be led regarding the same. Instant application was moved for framing additional issue. Same has been erroneously rejected by the court below. He has placed reliance on judgments reported as ***Chebrol Sriramalu vs. Vakalapudi Satyanarayana, 2013 (9) SCC 404*** and ***Nazar Singh vs. Satnam Singh and others, 2015 (4) R.C.R. (Civil) 51*** in support of the contention that additional issue can be framed at any stage of the

proceedings. Same could not have been rejected only on the ground that there was delay in moving the application.

Prayer was opposed by counsel appearing for respondent No.1. He stated that no codicil was ever executed by Amar Nath. The instant application has been moved at a stage when suit is at the stage of culmination. Plaintiff could easily have led evidence in support of the document now sought to be produced, as same would fall within the ambit of issue No.1. Defendant/petitioner is merely trying to delay the proceedings as he is in possession of the property. He has relied upon judgments reported as *Nedunuri Kameswaramma vs. Sampati Subba Rao, 1963 AIR (SC) 884* and *Kannan (dead) by Lrs and others vs. V.S. Pandurangam (dead) by Lrs & others*.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Plaintiff and defendant No.1 are real brothers. Dispute is regarding inheritance of property owned by their father namely, Amar Nath. Plaintiff Jagdish Chander has filed the instant suit for declaration that he was in exclusive possession as owner of shop in question by virtue of a Will. He also sought injunction to restrain the defendants from interfering in his rights. After pleadings were complete, issues were framed on 8.8.2011. Plaintiff was given opportunity to lead evidence. Same was closed by order dated 28.11.2014. Thereafter, defendant produced eleven witnesses and relied upon a Will dated 5.9.1984. Their evidence was closed vide order dated 29.5.2015. Defendants thereafter moved two applications for additional evidence, which were disposed of. After completion of

rebuttal evidence, defendants moved instant application to prove a codicil stated to have been executed by Amar Nath on 28.11.1990 in Urdu language. Prayer has been rejected by the court below. On due consideration of the matter, I find no substance in plea of the defendant/petitioner. He pleaded before the court that his father Amar Nath had executed a Will in his favour and he led evidence regarding the same in light of issue No.1 framed by the court below. It is inexplicable why he did not lead evidence regarding codicil, if any, within the framework of the same issue, particularly when he claimed existence of same in his pleadings. If said document (codicil) was in his possession, same could have been proved in continuation of the evidence led before the court regarding the Will dated 5.9.1984. The suit, which was instituted in the year 2009, is now at the stage of culmination and is fixed for arguments. Framing of additional issue would, at this stage, regarding codicil would amount to *de novo* proceedings. In my considered view, this course of action is not warranted. There is no dispute regarding the proposition laid down in judgments ***Chebrol Sriramalu' case and Nazar Singh's case (supra)***. However, same are not applicable in peculiar facts and circumstances of this case. On the other hand, this court has clearly held in judgment reported as ***Jaswant Singh vs. Sukhwinder Singh and another, 2006 (4) ICC 749*** that additional issue need not be framed if same is covered by the existing issues settled between the parties. I find that said judgment is squarely applicable to the facts of the case, as petitioner had already led evidence regarding Will dated 5.9.1984 in light of issue No.1 framed in the suit. There is nothing to show that a separate issue was required to be framed regarding the codicil,

now sought to be adduced in evidence. I find no ground to interfere in revisional jurisdiction. Petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

May 15, 2017
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No