

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

CR No.288 of 2017.

Date of Decision: 18.01.2017.

Snehlata and others

....Petitioners.

VERSUS

Om Parkash and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.K. Bhardwaj, Advocate for the petitioners.

SNEH PRASHAR, J.

This revision petition is directed against the order dated 19.12.2016 passed by learned Civil Judge (Junior Division), Hansi by virtue of which the application under Order 18 Rule 17-A read with Section 151 of the Civil Procedure Code (for short, "CPC") filed by the petitioners seeking permission to lead additional evidence was dismissed.

The facts garnered from the record are that respondents Om Parkash and Satbir Singh filed a suit for declaration challenging the will dated 29.05.2008 allegedly executed by Randhir Singh son of Baru son of Heera and the mutation sanctioned on the basis of the same in respect of the land that was subject matter of the suit, on the ground that the said documents were based on fraud and misrepresentation and were forged documents. As a consequential relief, a restraint order was sought against the petitioners from alienating the suit land or taking possession of the same forcibly and illegally.

On the other hand, petitioner Snehlata claimed to have contracted Krewa marriage with Randir Singh and alleged that during his life time Randhir Singh had executed a will dated 29.05.2008 in her favour and in favour of her daughters. She also filed a civil suit for declaration claiming entitlement to partition of the suit land on the basis of the will. Since petitioner No.1 Snehlata and her daughters claimed to be beneficiaries of the will allegedly executed by deceased Randhir Singh, in both the suits the burden of proving the issue that the will was a valid and legally executed testament was placed on the petitioners. Both the suits were consolidated by order dated 14.07.2015 passed by this Court in Civil Revision No.5089 of 2013. Both the parties adduced evidence in support of their respective claims. After closure of evidence by both the parties, the petitioners filed an application for additional evidence for examining Retd. Joint Sub Registrar, Hansi namely, Rajinder Prasad and to place on record certain documents which could not be produced earlier.

The application was contested by the respondents on the ground that the evidence, which the petitioners intend to lead by way of additional evidence, was the evidence to be led by them in affirmative and was not such which could not have been produced earlier despite due diligence.

Learned trial Court after hearing counsel for the parties and considering the relevant facts and circumstances, dismissed the application of the petitioners vide order dated 19.12.2016. Aggrieved against the said order, the petitioners have filed the instant petition.

The submissions made by Mr. S.K. Bhardwaj, learned counsel

Learned counsel for the petitioners submitted that the two attesting witnesses of the will examined by the petitioners were Hoshiar and Ram Kailash, who appeared as DW1 and DW2 respectively on 04.04.2015. The respondents did not get their cross-examination recorded on the said date and their cross-examination was concluded on 03.11.2016. As the witnesses were won over by the respondents, they did not support the case of the petitioners in the cross-examination. As such, it has become necessary to examine the Retd. Joint Sub Registrar, Hansi with whom the will was registered. He also submitted that some documents showing Krewa marriage between Randhir Singh and petitioner No.1 Snehlata are also to be produced and the said ocular and documentary evidence is material and necessary for proper and complete adjudication of the case.

The facts that emerged during the trial have been summarized by learned trial Court in Para No.7 of the order which are reproduced hereunder:-

“As such, the applicant Sneh Lata was burdened to lead evidence that Will No.63, dated 29.05.2008 was a validly and legally executed testament by deceased Randhir Singh. Other thing, which the applicant was to lead evidence on the factum of her alleged Karewa marriage with deceased testator. In her pleadings, she has pleaded that photographs of the event of Karewa of the applicant were taken and thus, she must be having the same with her. Countered with this question, the plaintiff in first breath stated that the original photographs are with her. When the undersigned again countered the applicant that if, the photographs are with her, still, she may produce the

same on record, if, she is granted some time. Then when the Court asked the applicant about producing the photographs for perusal of the Court after lunch, the applicant resiled. The applicant rather improved her stand that now the said photographs are not with her and she was even went on arguing that probably the defendants might have break through her house to steal away the photographs, as she has to remain present before the Court during hearing of the case. Let it be, perusal of the record further shows that there is a document Ex.P16 i.e. affidavit dated 04.08.2010 submitted by the applicant, wherein it is deposed that she has not solemnized any second marriage or Kareva after demise of her husband Yudhbir. Said affidavit is not denied by the applicant rather the same has been produced in plaintiffs' evidence. Countered with this situation, when it was posed by the Court that as per the admitted document Ex.P16, she had not solemnized any Kareva with Randhir or anyone else, the applicant has run ahead saying that said document might have been procured by Shri R.S. Duhan, Advocate, for respondents alleging that Shri R.S.Duhan, Advocate, had been their family lawyer. All these facts and circumstances speak in so many words and in volume that the applicant is making deliberate shifts to her claim. Further, admittedly an FIR No.570, dated 20.08.2014, under Sections 193, 196, 199, 200, 209, 463, 464, 465, 466, 468, 471,34/120B IPC, has been lodged against applicant Sneh Lata in P.S. City Hansi. Earlier, Shri Pawan

Sharma, Advocate, was engaged by her as her lawyer in consolidated case titled as 'Sneh Lata Vs. Bimla etc.'. In the second case titled as "Om Parkash etc. Vs. Sneh Lata etc.', Shri Pardeep Pannu, Advocate, was her Advocate. Later on 25.05.2015, she engaged Shri Surjeet Arya, Advocate as her lawyer in the case. Photographs Mark A1 to Mark A12 were produced and marked on 15.07.2015. There is no document or oral submission that the applicant ever moved any complaint to any authority. The repeatedly changing version of the applicant suggests that there is no end of litigation based upon speculations and imaginations."

Learned counsel for the petitioners could not demonstrate any illegality or perversity in the aforesaid analysis of the facts, circumstances and evidence available on record, by learned trial Court. In addition to the said reasons, the application deserves an outright dismissal on the ground that it was vague and misconceived and did not contain particulars of the documents which the petitioners intended to produce by way of additional evidence. Without complete particulars of the documents sought to be produced by way of proposed amendment, the application did not deserve to be entertained even. As far as examination of the Retd. Joint Sub Registrar was concerned, that was not such, which could not have been produced by the petitioners during the evidence despite due diligence. The petitioners examined attesting witnesses of the will. If at all they were not satisfied with their deposition during cross-examination, they should have immediately sought indulgence of the Court for examining Joint Sub Registrar, in case

be allowed to be produced in due process of law. The evidence was in their knowledge but for the reason best known to them, was not produced at the relevant stage.

No doubt, as held by Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, A.I.R. 2005 Supreme Court 3353**, to do substantial justice the Court has inherent power to allow any material evidence to be led by the parties by way of additional evidence unless the application filed prima facie suffers from malafide and amounts to abuse of process of the Court. Otherwise also, if the evidence sought to be produced by way of additional evidence is found to be not relevant and not such which could not have been produced by the applicant at the appropriate stage despite due diligence, the prayer made for leading additional evidence has to be declined.

In the case in hand, the application is prima facie not bonafide. It was intentionally filed at a belated stage. It did not contain the particular/ details of the documents sought to be produced. It appears the application was filed primarily to delay the proceedings. Thus, finding no illegality or perversity in the order of learned trial Court and there being no merit in the petition, it is dismissed.

(SNEH PRASHAR)
JUDGE

18.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**