

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

**CR No.6207 of 2017**

**Date of Decision:06.12.2017**

Harlalpreet Singh

...Petitioner

**Versus**

Gurpal Singh @ Rachpal Singh and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** Mr.G.S.Bhatia, Advocate for the petitioner.  
Mr.Pardeep Goyal, Advocate for respondent No.1.

**ANIL KSHETARPAL, J. (ORAL)**

Defendant-petitioner is in the revision petition against the order dated 31.8.2017, permitting the plaintiff to prove the Will dated 9.3.2004 by way of secondary evidence.

Some facts would be required to be noticed. Gurdial Singh filed a suit for declaration, claiming that he is owner in possession to the extent of 2/3<sup>rd</sup> share in the land measuring 30 bighas and 7 biswas and land measuring 15 bighas and 8 biswas. Plaintiff had also sought declaration that the sale deed executed on 14.10.2011 by Satwinder Kaur in favour of defendant No.1 is illegal, without consideration and null and void.

Plaintiff had claimed to be owner on the basis of a registered Will dated 9.3.2004.

In the written statement, defendants contested the suit and pleaded that the registered Will dated 9.3.2004 has already been cancelled by a registered document on 14.12.2009 and the earlier Will has been substituted.

After completion of pleadings, the learned trial court framed the following issues:

1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether the sale deed dated 14.10.2011 is null and void and without consideration? OPP
3. Whether plaintiff is entitled to the joint possession on the basis of as prayed for? OPP
4. Whether the plaintiff is entitled to the relief of permanent injunction? OPP
- 4A. Whether Abtalnama dt. 14.12.2009 is illegal, null and void and liable to be set aside? OPP
5. Whether the suit of the plaintiff is not maintainable? OPD
6. Whether the plaintiff has no cause of action to file the present suit? OPD
7. Whether the plaintiff has not come to the court with clean hands and has intentionally suppressed the true facts? OPD
8. Relief.

The plaintiff led his evidence in affirmative and closed the same on 18.10.2016. Thereafter the defendants were given opportunity to lead their evidence.

During the period when defendants were leading evidence, plaintiff filed an application, seeking amendment of the plaint so as to challenge the cancellation deed/subsequent Will dated 14.12.2009. The amendment was allowed. The plaintiff was permitted to file his amended plaint. Defendants were given opportunity to file their written statement which was duly filed.

Thereafter the learned trial court framed an additional issue,

which is extracted as under:-

*“4-A Whether the abtlnama/will dated 14.12.2009 is illegal, null and void result of fraud, ineffective and is liable to be set aside? OPP.*

After framing of additional issue, defendants closed their evidence.

Thereafter, the plaintiff moved an application for directing defendant No.2 to produce the original Will dated 9.3.2004 and in case of failure, plaintiff sought permission to prove the said Will by leading secondary evidence. The learned trial court allowed the application vide order dated 31.8.2017.

I have heard the learned counsel for the parties at length and with their able assistance gone through the documents available in the paper-book.

It is not in dispute that the plaintiff has already concluded his evidence. After conclusion of evidence, additional issue was framed, which has been extracted above, i.e. Issue No.4 A. The plaintiff is entitled to lead evidence only with respect to the aforesaid issue. The plaintiff has already closed his evidence in affirmative. There is no application for permission to lead additional evidence. If the plaintiff has failed to prove the Will dated 9.3.2004, while leading his evidence in affirmative, he cannot be allowed to reopen the evidence on the ground that the additional issue has been framed. Additional issue is only restricted to subsequent cancellation deed/Will dated 14.12.2009.

Hence the order passed by the learned trial court, permitting the plaintiff to lead secondary evidence to prove the Will dated

9.3.2004 is clearly erroneous.

In view of discussion made above, the present revision petition is allowed. The impugned order is set aside.

06.12.2017  
mks

(ANIL KSHETARPAL)  
JUDGE

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

**Whether Reportable: Yes/No**