

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

CR No. 6428 of 2017(O&M)

Date of decision: 21.9.2017

Paramjit Singh

....Petitioner

VERSUS

Kuldeep Kaur Lalari and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Parminder Singh-I, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 18.08.2017 (Annexure P-6) passed by the Civil Judge (Junior Division), Phagwara whereby evidence of the petitioner (defendant No.1) has been closed by order of the Court.

Counsel for the petitioner has submitted that Kuldeep Kaur and Darshan Kaur, sisters of the petitioner have filed a suit for declaration claiming themselves to be owners in possession of 2/5th share in house No.395/4 situated in Phagwara by raising a plea that Will dated 15.06.1992 alleged to be executed by Kartar Kaur and registered on 11.07.2006 in favour of Paramjit Singh (petitioner herein) is a forged and fabricated document and does not affect rights of the plaintiffs. It is further submitted that as the petitioner has propounded Will dated 15.06.1992 in his favour, he was directed to start with evidence to discharge the onus qua the Will in question.

The petitioner filed application on 19.02.2015 for permitting him to prove the Will by way of secondary evidence. The said application

remained pending approximately for a period of 2½ years and was finally allowed by the trial Court vide order dated 26.07.2017 (Annexure P-2). The Court adjourned the case to 04.08.2017 for evidence of the petitioner. On 04.08.2017, the Court forced counsel for the petitioner to make a statement that the petitioner shall conclude the entire evidence on the next date of hearing failing which the same may be deemed to be closed. It is argued with vehemence that the Court did not provide adequate opportunity to the petitioner to produce requisite evidence for proving the Will in question. A serious prejudice shall be caused to the petitioner in case he is not allowed to examine the witnesses with regard to whom order of summoning through process of the Court was passed in application dated 09.01.2015 whereby he was allowed to deposit diet money of Rs.800/- vide order dated 14.01.2015 (Annexure P-5). It is prayed that the petitioner may be allowed two effective opportunities to conclude his evidence though he would ensure presence of the witnesses but by obtaining dasti process in respect of official witness(s).

I have heard counsel for the petitioner, perused the paper-book particularly various annexures appended with the petition.

Counsel for the petitioner is not in a position to inform the Court as to the date on which the issues were framed and the first date fixed for evidence of the petitioner. However, the suit appears to have been instituted in the year 2012. It is a matter of record that an application under Section 65 of the Indian Evidence Act, 1872 filed by the petitioner to prove the certified copy of Will dated 15.06.1992 by way of secondary evidence filed in February 2015 was decided by the trial Court after 2 ½ years in July 2017. Thereafter the Court has given less than one month time by adjourning the case twice to adduce evidence by the petitioner. It

is surprising that counsel for the petitioner made an irresponsible statement on 04.08.2017 that the petitioner will conclude his entire evidence by the next date of hearing.

As per the settled position in law, rules of procedure are handmaid to administration of justice. Equally true is that technicalities cannot be allowed to stand in the way of substantial justice. In case the petitioner is not permitted to prove the Will in accordance with law, he would be debarred for all the times to come to stake his claim to the suit property on the basis of Will in question.

Taking into consideration principles of natural justice coupled with that there is nothing on record suggestive of the fact that the petitioner is interested in delaying final adjudication, the petitioner is allowed two effective opportunities to examine the witnesses detailed in application (Annexure P-5) besides examination of the petitioner subject, however, to the following conditions:-

1. The petitioner shall ensure presence of himself and his witnesses on the two dates to be fixed by the trial Court. He can seek assistance of the Court by getting dasti process for service of official witness(s) but would ensure his presence along with records on the date to be fixed by the Court.
2. The petitioner shall prepare a demand draft of Rs.10,000/- in the name of respondents/plaintiffs and the same shall be handed over to the plaintiffs on the first date to be fixed by the trial Court for evidence of the petitioner.

3. The trial Court shall give at least 15 days time on each occasion (dates) to enable the petitioner to arrange his visit to India and ensuring presence of witnesses.

Failure of the petitioner to comply with any of the aforesaid conditions would entail dismissal of the petition.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondents in order to save them from unnecessary expense and inconvenience. However, the respondents would be at liberty to file an appropriate application in case they have any grievance to express.

SEPTEMBER 21, 2017	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no