

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7056 of 2015(O&M)
Date of Decision: 11.09.2017

Deepak Balhara and another
Vs
Murti Devi and others

.....Petitioners

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.K. Tuteja, Advocate
for the petitioners.

Mr. Anil Dutt, Advocate
for respondent No.1.

Mr. Kuldeep Balhara, respondent No.4 in person.

Mr. Sanjeev Kadian, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed the order dated 25.09.2015 passed by Additional Civil Judge (Senior Division), Rohtak, vide which application filed by the petitioners under Order 1 Rule 10 CPC was dismissed.

[2]. Raghbir Singh Balhara was the owner of the properties. Murti Devi filed a probate petition on the basis of Will dated 26.04.2006 which was in continuation of earlier Will dated 04.12.2000 which stood merged in this later Will dated 26.04.2006. The said probate petition was filed on 26.07.2010. Murti Devi claimed herself to be wife of Raghbir Singh Balhara.

[3]. The said probate petition was contested by Bhanti first wife of Raghbir Singh Balhara and Sukhbir son of Raghbir Singh Balhara. In the written statement, they even denied the relationship of Murti Devi with Raghbir Singh Balhara and claimed that Bhanti was the widow of Raghbir Singh Balhara and Sukhbir took birth from the said marriage. Wills dated 26.04.2006 and 04.12.2000 were denied altogether.

[4]. Bhanti and Murti Devi both have claimed the status of wives of Raghbir Singh Balhara. From the wedlock of Raghbir Singh Balhara with Bhanti, Sukhbir took birth. Plaintiffs Deepak and Sachin are sons of Sukhbir. From the wedlock of Murti Devi with Raghbir Singh Balhara, respondent No.4/Kuldeep and respondent No.5/Pradeep took birth.

[5]. An application under Order 1 Rule 10 CPC was filed by the petitioners in the probate petition on 25.05.2015 for impleading themselves to be party respondents on the basis of Will dated 13.03.2008 allegedly executed by Raghbir Singh Balhara in their favour.

[6]. It has come on record that Bhanti filed a civil suit in the year 2010, challenging the Will dated 26.04.2006 in favour of Murti Devi. Bhanti sought to get the proceedings of probate petition stayed on the ground of pendency of said civil suit. The said prayer was dismissed on 17.11.2014. A civil revision was filed and in the meantime, civil suit filed by Bhanti was also

dismissed on 24.03.2015. Thereafter, civil revision was also dismissed on 21.05.2015.

[7]. During course of arguments, it has come on record that in the probate proceedings, Sukhbir himself has relied upon the Will dated 13.03.2008 when he appeared in the proceedings on 06.12.2012. In support of his contention, the Will dated 13.03.2008 has already been exhibited as Ex.D6 and attesting witnesses namely Surajmal and Dhan Raj have been examined as RW 3 and RW 5 respectively. Even the scribe i.e. sister of the petitioners namely Deepu @ Deepti has been examined as RW 4 besides examination of Sukhbir as RW 2.

[8]. Both the parties have reached to a consensus that the petitioners be granted one opportunity to file written statement in the probate proceedings and thereafter, both the Wills dated 26.04.2006 and 13.03.2008 be sent to FSL for their comparison with some admitted signatures of Raghbir Singh Balhara in the previous litigation to be disclosed by Murti Devi. It is made clear that the petitioners will not be entitled to lead any evidence including the cross examination of any witness previously examined and will not ask for any re-examination of any witnesses already examined by the parties or other evidence in any manner. Except the aforesaid arrangements, no other indulgence is required to be given in favour of the petitioners.

[9]. Consequently, this revision petition is accepted only to

the extent of impleading the petitioners as party respondents in the probate petition in the manner as suggested above. Both the parties are at liberty to move appropriate application before the Probate Court and seek reference of the Wills to the FSL for necessary comparison and thereafter, Probate Court shall proceed to receive the report and decide the probate petition preferably within three months from the date of receipt of report from FSL. Probate Court shall ensure early receipt of FSL from the concerned quarter.

[10]. Disposed of accordingly.

September 11, 2017.	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No