

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

CR No.7122 of 2016 (O&M).

Date of Decision: 26.05.2017.

Jal Kaur @ Kuldeep Kaur

....Petitioner.

VERSUS

Norang Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Harveen Kaur, Advocate for the petitioner.

Mr. Sudesh Sahi, Advocate for the respondents.

SNEH PRASHAR, J.

Aggrieved by the order dated 22.09.2016 vide which learned trial court dismissed the application filed by the petitioner for framing of an additional issue, the instant petition has been filed.

The submissions made by Mr. Harveen Kaur, learned counsel representing the petitioner and Mr. Sudesh Sahi, learned counsel representing the respondents have been heard.

Learned counsel for the petitioner argues that in their written statement the respondents-defendants had raised a specific plea that Bant Singh had executed a will in their favour on the basis of which a mutation was entered in their names. However, learned trial court did not frame any issue calling upon the respondents to prove existence of the will referred to by them. The application filed by the petitioner for that purpose was contested by the respondents-defendants and it was dismissed by learned

trial court. When the respondents-defendants do not claim an issue on the plea that Bant Singh had executed any will in their favour, they need to be debarred from claiming a right on the basis of a will at any subsequent stage.

Counsel for the respondents submits that as mentioned by learned trial court in the impugned order, both the parties have already led their evidence and the case is at the final stage and the trial is not required to be reopened by framing an additional issue.

The respondents-defendants may have pleaded in their written statement that their father Bant Singh had executed a will in their favour but it has been mentioned by learned trial court in the impugned order and is also apparent from the written statement (Annexure-P3) filed by respondents-defendants No.1 and 2 in the case, that the particulars of the will, if any, were not mentioned by the respondents-defendants in their pleadings statement. The impugned order also shows that no will had been produced on record by the respondents-defendants. The order also mentions that no evidence had been led by either of the parties with regard to the will. Meaning thereby that neither the respondents claimed an issue on their pleading with regard to the will nor they led any evidence to prove the same.

Needless to say that the onus is on the party who sets up a will to prove existence, validity and execution of the will in due process of law. When the particulars of the will had not been mentioned in the pleadings, document had also not been produced, no evidence with regard to the will had been led by the respondents, learned trial court rightly dismissed the application of the petitioner for framing of an additional issue, especially

take care of the situation where a person entitled to raise a plea regarding a cause of action in a suit omits to take the same at the appropriate stage and also where the pleas raised are not substantiated by required legal evidence.

The order passed by learned trial Court suffers from no illegality, perversity or jurisdictional error warranting interference and the petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

26.05.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**