

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7579 of 2015

Date of Decision: 02.12.2017

Sukhwinder Kaur and others

.....Petitioners

Vs.

Jaskaran Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ishwar Lal, Advocate, for the petitioners.

Mr.Ramandeep, Advocate, for the respondents.

RITU BAHRI, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India praying for setting aside the order dated 21.10.2015 (P-7) whereby the application for leading additional evidence by the petitioners/defendants has been dismissed.

The brief facts of the case are that respondent-plaintiffs filed a civil suit on 30.09.2009, claiming that they be declared as owner of 5/6th share in the property of deceased father Karaj Singh, who died on 13.10.2000, and mutation No.1134 having been sanctioned in favour of the only son Sukhwinder Singh on the basis of Will dated 25.01.2000 and the entries made in revenue record showing Sukhwinder Singh as owner of the property was wrong and illegal.

The petitioners/defendants filed written statement stating that Karaj Singh executed a Will in favour of Sukhwinder Singh and the same stands endorsed by his daughters before the revenue officials in mutation

after his death wherein Manjit Kaur and other daughters have submitted

attested affidavits confirming the Will executed by Karaj Singh their father to be true and correct and mutation in favour of Sukhwinder Singh their brother relinquishing their rights in the property.

From the pleadings of the parties, the following issues were framed by the trial Court:

1. Whether the plaintiff are entitled to declaration to the effect that they are owners in possession to the extent of 5/6th share belonging to the plaintiffs on the basis of nature succession? OPP
2. Whether Karaj Singh original owner of the suit property executed a Will dated 25.01.2000 in favour of Sukhwinder Singh, qua the suit property? OPD.
3. If issue No.3 is proved, whether the Will dated 25.01.2000 is illegal, null and void and is liable to be ignored? OPP.
4. Whether the suit is filed within limitation? OPP.
5. Whether the plaintiffs are entitled to permanent injunction restraining the defendants from alienating the suit property to the extent of 5/6th share belonging to the plaintiffs? OPP.
6. Whether the plaintiff has filed present suit by concealing the material facts from this Court? OPD.
7. Whether the plaintiffs have got no cause of action to file the present suit? OPD.
8. Relief.

The plaintiffs only dead evidence by statement of Pushpinder Kaur-plaintiff No.4 and closed their evidence. The defendants led their evidence by producing the scribe of Will and witness Kesar Singh and of defendant Sukhwinder Kaur and revenue official or proving the Mutation

No.1134. The revenue officials stated record of mutation containing the original Will dated 25.01.2000 and any other document stands destroyed with the record, since more than 5 years lapsed since mutation was done on 23.11.2000. and the application was filed for leading secondary evidence of the will dated 25.01.2000 and the same was allowed vide order dated 10.02.2015 (Annexure P-1). After closing the evidence of defendants, plaintiffs led their rebuttal evidence and produced unconcerned witness Raj Singh as PW-2 who placed an alleged agreement to sell executed by Karaj Singh deceased wherein he had put his thumb impression and application was allowed by the trial Court vide order dated 13.03.2015 to compare the thumb impression from the Will dated 25.01.2000 and thumb impression on the agreement to sell by finger expert Dr.Inderjit Singh. Thereafter the plaintiffs examined Joginder Singh husband of Plaintiff No.3 as witness, who denied having signed as witness of the Will dated 25.01.2000. He further stated that neither he nor Hira Singh i.e. husband of plaintiff No.2 signed the Will executed by Karaj Singh on 25.01.2000 as Sukhwinder Singh nor Hira Singh knows signing in Punjabi. Hira Singh signs in Hindi. The true translated relevant portion of the statement of Joginder Singh was Annexure P-3. The defendants knew that Joginder Singh and Hira Singh witness to the Will dated 25.01.2000 being husbands of plaintiffs No.3 and 2 respectively, will not disclose the true facts. Hira Singh husband of plaintiff No.2 went along with the others for immersion of ashes of Sukhwinder Singh husband of defendant No.1, at Gurudwara Garhi Sahib and sought information with regard to the same who had provided the certificate showing the record of immersion of ashes of Sukhwinder Singh son of Karaj Singh (Annexure P-4), which clearly shows that Hira Singh went along with

others for immersion of ashes on 15.08.2009 and had signed in Punjabi.

The defendant in order to prove that Joginder Singh was interested witness and had deposed falsely, an application to lead additional evidence by bringing the truth about Hira Singh having gone to immerse the ashes on 15.08.2009 and had signed therein in Punjabi, by proving through expert by calling the record from the concerned Gurudwara was filed. A copy of application was annexed as Annexure P-5. Therefore, the application was wrongly dismissed for leading additional evidence vide impugned order dated 21.10.2015 (Annexure P-7).

Learned counsel for the petitioner submits that once the application filed by the plaintiffs for examining the thumb impression of Karaj Singh from a photo copy of Will was allowed by the trial Court vide order 13.03.2015 (P-2), the application made by the defendant for comparing the signatures of Hira Singh by calling the record from the concerned Gurudwara (Annexure P-5) and comparing the signatures of in the Will dated 25.01 2000, should have been allowed.

Vide order dated 21.10.2015, the trial Court while dismissing the application clarified that specimen signatures can be compared only of with those appearing in original. Photocopies of signatures could not be compared with standard signatures. Since, original Will had not been produced by the defendants, the application for additional evidence was dismissed. Moreover, there was no satisfactory reason/cogent reason has been mentioned that why the defendant could not have produced this evidence while he was leading evidence in affirmative.

A perusal of Annexure P-4 shows that Hira Singh went along with

others for immersion of ashes on 15.08.2009 and had signed in Punjabi and

this information was received from the Registrar of the Gurudwara on 30.06.2015 and in this document, name of the Hira Singh was mentioned.

In view of the above information given in Annexure P-4 dated 30.06.2015, Joginder Singh had not made any correct statement and hence, the original signatures of Hira Singh mentioned in Annexure P-4 should have been compared with the Will dated 25.01.2000 for correct decision of the case. A reference can be made by the judgment of this Court in the case of **Rajesh Kumar Vs. Mangat Rai and others 2012 (2) PLR 334** whereby, it has been observed that inherent power of the Court to do substantial justice between the parties and allow any material evidence to be produced by them unless it is actuated with malafides or is due to gross negligence on their part and a duty has been cast on the Court to examine prima facie the relevancy of the material sought to be produced so as to conclude that the application filed is bona fide and not to abuse the procedural law to harass the parties. In view of the observations made in the said judgment, application for additional evidence should be allowed.

In the present case, the documents which are sought to be produced by way of additional evidence are the certified copy of the Gurudwara i.e. Annexure P-4 which clearly shows that Hira Singh went along with others for immersion of ashes on 15.08.2009 and the same certificate has been issued on 30.10.2015. Thus, the application for leading additional evidence cannot be said to be filed with malafide intention. In the given circumstances, it is considered appropriate that an opportunity is granted to the defendant-petitioner to lead additional evidence to prove the aforesaid documents.

In view of the above, the present revision petition is allowed and

the order dated 21.10.2015 (Annexure P-7) is set aside with one opportunity to the petitioners/defendants to lead additional evidence before the trial Court.

(RITU BAHRI)
JUDGE

02.12.2017
anil

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>