

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

Civil Revision No.766 of 2017 (O&M)
Date of decision: February 02, 2017

Iqbal Singh ...Petitioner

Versus

Dilbagh Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Raman Goklaney, Advocate for the petitioner.

Rajan Gupta, J. (oral)

Present revision petition is directed against the order dated 21.01.2017, passed by Civil Judge (Junior Division), Fazilka, whereby application filed by the petitioner under Order 14 Rule 5 CPC has been allowed to the extent of framing issue regarding validity of the Will.

Learned counsel for the petitioner has assailed the order. According to him, issue regarding obtaining the will fraudulently by defendants No.1 to 3, has not been framed by the trial court.

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

It appears that respondent No.2/plaintiff filed a suit for possession against petitioner and proforma respondents No.2 to 10, regarding 1/5th share of land measuring 236 Kanals 01 Marla, situated in the revenue estate of village Shahtirwala, District Fazilka, as detailed in the plaint, and also for permanent injunction restraining defendants No.1

to 3 from alienating or parting with possession of any part of the land in dispute. Issues in the case were framed on 30.10.2013. Thereafter, on the application moved by the plaintiff on 11.12.2014, following additional issue was framed:-

“4-A. Whether the Will dated 10.03.1991 allegedly executed by Raghubir Singh is a legal, genuine and valid Will as alleged? OPD”.

During pendency of suit, petitioner filed application under Order 14 Rule 5 CPC on 30.10.2016 for framing of following additional issues:-

- “1. Whether the Will dated 10.03.1991 was fraudulently procured by the defendants No.1 to 3 from Sh. Raghubir Singh by misrepresentation of facts as alleged in the plaint? OPP.
2. Whether the suit of the plaintiff is within limitation? OPP.”

After hearing both the parties, trial court partly allowed the application filed by the petitioner and framed issue regarding limitation of the suit. It declined the prayer for framing issue regarding fraudulently obtaining the Will by defendants No.1 to 3 by observing that onus to prove genuineness of Will is upon defendants No.2 and 3 and a specific issue in this regard has already been framed. I find no infirmity with the order. The issues already framed were exhaustive in nature and there was no necessity of framing additional issue regarding fraudulently obtaining the Will by defendants No.1 to 3. It is evident that number of issues were framed by the court in the suit and thereafter, additional issue regarding

limitation was also framed on the application of petitioner. In my considered view, plea to amend the issues or frame any other additional issue is without any reasonable ground. I, thus, find no merit in the revision petition.

Dismissed.

(RAJAN GUPTA)
JUDGE

February 02, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No