IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 8814 of 2015 (O&M)
Date of Decision: 07.10.2017

Sonia Gupta **... Petitioner**

vs.

Jatinder Kumar & Anr. **... Respondents**

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by:- **Mr. Munish Jolly, Advocate**
for the petitioner.

Mr. Anuj Kaura, Advocate with
Mr. Junaid Singh Bakshi, Advocate
for respondent No.1.

Mr. Daman Dhir, Advocate
for respondent No.2.

ANITA CHAUDHRY, J.

This is plaintiff's revision preferred against the order dated 19.10.2015 passed by the trial Court by virtue of which her application for tendering examination-in-chief by way of affidavit of Narinder Khosla, in rebuttal, has been dismissed.

To adjudicate the issue involved, it is desirable to refer to the facts of the case.

The plaintiff-petitioner Sonia Gupta filed a suit against her brother and Estate Office, Chandigarh seeking joint ownership of H. No. 2040, situated at Sector 40 Chandigarh with her brother on the basis of natural succession. It was her case that the mother of the parties had died on 29.11.1987 and their father died intestate on 15.09.2008. Her plea was that both the siblings were entitled to half share in the property which was previously owned by their father. It

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was claimed that her request was not acceded to by the Department as a Will purported to be executed by her father was produced by dint of which her brother had claimed full ownership in the property. A challenge to the Will was also laid in the suit.

Respondent No.1 contested the suit and staked his claim on the suit property on the basis of Will dated 10.08.2005.

Issues were framed and the parties led their evidence. When the case was fixed for rebuttal evidence, an application for filed by the plaintiff seeking permission to tender by way of affidavit the examination in chief of Narinder Khosla in rebuttal. Reply to the application was filed. The trial Court dismissed the application.

Dis-satisfied with the same, instant revision petition has been filed by the plaintiff.

I have heard learned counsel for the parties and have perused the paper-book carefully.

Learned counsel for the petitioner had submitted that the trial Court has erred in declining the prayer and the plaintiff has a right to lead evidence in rebuttal to the evidence produced by the defendant. According to learned counsel, the Will was propounded by respondent-defendant No.1 and it was upon him to prove its execution and that it was free from all suspicions and after the defendants had led the evidence and closed it on 21.05.2015, immediately thereafter on 27.05.2015 this application was filed by the plaintiff seeking permission to tender the affidavit of Mr. Narinder Khosla who was their family friend to say that the deceased had suffered a paralytic

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attack before his death and was not happy with the conduct of his son. It was urged that they wanted to lead evidence and denial thereof has caused serious prejudice. He has referred to **Jagaminder Kaur Vs. Rajdip Kaur @ Nitu, 1998(4) RCR(Civil) 513, Gurbaksh Singh Vs. Jagat Singh & Ors. 1990(2) Cur LJ 41, Biru Ram & Ors. Vs. Roshan Lal & Ors. 2015(2) PLR 491, Pawan Kumar Vs. Surinder Pal & Anr. 2010(8) RCR(Civil) 1958, Pappu @ Rai Singh Vs. Smt. Chander Wati & Ors. 2012(4) PLR 607, Balvinder Singh Vs. Balbir Singh & Ors. 2014(1) Law Herald 585, Jaswinder Singh Vs. Rajwant Kaur & Ors. 2014(2) Law Herld 1138, Thiruvengada Pillai Vs. Navaneethammal & Anr. 2008(2) RCR(Civil) 262, K. Laxmanan Vs. Thekkayil Padmini & Ors. 2009(1) Recent Apex Judgments 78, H. Venkatachala Iyengar Vs. B.N. Thimmajamma & Ors. 1959 AIR(SC) 443, R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & VP Temple & Ors. 2003(4) RCR (Civil) 704** and **A Raghavamma & Anr. Vs. A. Chenchamma & Anr. 1964 AIR(SC) 136.**

Learned counsel for respondent No.1 had urged that the trial Court had placed onus of the main issue upon the plaintiff and she was to prove that the Will was not legal and valid document and it was for the plaintiff to produce evidence in this regard when her affirmative evidence was going on and once she had failed, she had moved the application to fill up the lacuna and the application was rightly dismissed by the trial Court. He had placed reliance upon **Jagdev Singh & Ors. Vs. Darshan Singh & Ors. 2007(1) RCR**

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(Civil) 794 and **Tejinder Kaur Vs. Kishan Singh & Ors. 2008(1) RCR(Civil) 485.**

The dispute between the parties is with regard to title of house bearing No. 2040, situated at Sector 40, Chandigarh. The plaintiff claimed half share on the basis of natural succession, whereas defendant No.1 propounded the Will. It has come on record that the original Will had not been produced by defendant No.1. No doubt, as per issue No.2 framed by the trial Court, the onus had been placed upon the plaintiff to prove that the Will was not a legal and valid document, but it is equally settled that it is the duty of the propounder of the Will to remove all clouds and satisfy the conscience of the Court that the instrument propounded was the Will of the testator. Once the defendant has led evidence in this regard, the plaintiff would certainly get a right to produce evidence in rebuttal thereto. If it is not done so then the very purpose of providing opportunity to lead rebuttal evidence by the plaintiff would be frustrated.

In Jagmaninder Kaur's case(supra), it has been held as under:-

> *"6. A consideration of the matter, I am of the opinion that the entire approach of the trial court is erroneous. The plaintiff is undisputedly widow of deceased Gurbachan Singh. She is Class-I heir. The defendant claims to be the adopted daughter of Gurbachan Singh. She has further laid her claim to the property of Gurbachan Singh on the basis of registered Will executed in her favour. Once that is so, it is for the defendant to prove the due execution of the Will as contemplated by the provisions of*

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> *Section 63 of the Indian Succession Act. It is for the propounder to prove not only the due execution of the Will but to also prove that it is free from all suspicions. Reference in that behalf be made to H. Venkatachala Iyengar Vs. B.N. Thimmajamma and others, AIR 1959 Supreme Court 443. Once the onus to prove the Will is on the defendant, the plaintiff is certainly entitled to lead evidence in rebuttal. The approach of the trial court that it was for the plaintiff to challenge the Will and to lead evidence in the first instance, is not correct."*

The aforesaid observations squarely covers the issue involved in the present case.

The respondents do not get any assistance from Tejinder Kaur and Jagdev Singh's case (supra) as it was upon the propounder of the Will to prove the execution and remove all suspicions and once he had led evidence, the plaintiff got a right to rebut the same in rebuttal.

The revision petition is allowed. Impugned order dated 19.10.2015 is set aside. The application filed by the plaintiff to lead evidence in rebuttal is allowed. The trial Court would fix a date for the evidence of the plaintiff in rebuttal. It will be the plaintiff's duty to produce her evidence on the date to be fixed by the Court.

07.10.2017 **(ANITA CHAUDHRY)**
Jiten **JUDGE**

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No

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