

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

CR No. 8647 of 2017(O&M)

Date of decision: 12.12.2017

Tripta Bajaj

.....Petitioner

VERSUS

Nishant Sidana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.K. Khunger, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 28.11.2017 (Annexure P-4) passed by the Civil Judge (Junior Division), Abohar whereby application of the petitioner to examine Sh. Manjit Singh, Sub Registrar Abohar by way of additional evidence has been dismissed.

Counsel for the petitioner has submitted that earlier application for examination of Sub Registrar was declined by the trial Court on account of contradiction in the name of Sub Registrar in the head-note of the application vis-à-vis para 7 thereof. Order passed by the trial Court in the earlier application was challenged in CR No.7994 of 2017 and the aforesaid petition was disposed of without prejudice to right of the petitioner to file a fresh application with regard to examination of Manjit Singh, the then Sub Registrar. It is argued with vehemence that the impugned order has been passed by the trial Court in utter disregard of the order dated 15.11.2017 passed in the aforesaid revision petition.

Another submission made by counsel is that examination of Manjit Singh, the then Sub-Registrar Abohar who registered the Will dated 28.12.1994 is necessary and material for proving that Smt. Jamna Devi, testator of the Will dated 28.12.1994 was mentally sound/fit. The last submission made by counsel is that a serious prejudice shall be caused to the petitioner in case she is not permitted to examine the witness concerned.

So far as plea of the petitioner that the impugned order has infringed the directions issued by this Court while passing order dated 15.11.2017 in CR No.7994 of 2017, the same is misconceived and liable to be rejected. This Court directed the trial Court to dispose of application filed by the petitioner in accordance with law.

Nishant Sidana and Ankit Sidana have filed a suit claiming to be co-owners in possession of the suit property and prayed for separate possession by way of partition of the suit house with consequential relief of injunction. The present petitioner, one of the daughters of Jamna Devi, has set up Will dated 28.12.1994, registered on 29.12.1994. As per plea of the petitioner, one of the attesting witnesses of the Will is no longer alive and the other attesting witness Mr. Ajay Kumar refused to depose as a witness as he is siding with the contesting party. The petitioner has sought to examine Sh. Manjit Singh Bhandari, the then Sub Registrar, Abohar who has registered the Will dated 28.12.1994 to prove mental capacity of Smt. Jamna Devi.

Apart from the fact that the petitioner has failed to make out a case for her failure to examine the witness at an appropriate stage despite exercise of due diligence, plea of the petitioner that non-examination of the

witness would be of serious consequence or render justice a casualty is not meritorious. Admittedly, Sh. Manjit Singh is not an attesting witness of the Will nor the Registering Authority can assume that status. A presumption of correctness is attached to endorsement with regard to registration of a document as the registration is done by the authority in discharge of its official function.

Section 68 of the Indian Evidence Act, 1872 deals with proof of execution of documents required by law to be attested and reads as follows:-

“68. Proof of execution of document required by law to be attested.

— If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

There is no dispute about the settled position in law that Will requires attestation by two witnesses. In the case at hand, one of the attesting witnesses of the Will namely Ajay Kumar is alive and available for examination. The petitioner has not examined him to prove the Will. As the petitioner has failed to examine one of the attesting witnesses, available for examination, no useful purpose would be served by examining the Registering Authority of the Will in question. In this view of the matter, contention of the petitioner that non-examination of the Registering Authority would cause serious prejudice to the petitioner is misconceived and accordingly rejected.

For the foregoing reasons, the petition fails and is dismissed.

However, nothing stated hereinbefore shall be construed as an expression

of opinion on merits of the case nor would cause prejudice to the petitioner at the time of final adjudication.

DECEMBER 12, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no