

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

Civil Revision No.1314 of 2018

Date of Decision:26.02.2018

Jeet Singh

.....Petitioner

Vs.

Bharat Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Ajay Jain, Advocate for the petitioner.

RAMENDRA JAIN, J. (Oral)

Petitioner- plaintiff No.1 through this revision petition under Article 227 of the Constitution of India has laid challenge to the order dated 12.02.2018 (Annexure P.5) of the trial Court dismissing his application for correction of Issue No.2 and placing its onus upon the respondents.

In nutshell, the petitioner along with his nephews and sister-in-law filed a suit against the respondents for declaration to the effect that they were owners in possession of half share of the land measuring 273 kanal 18 marlas detailed in the headnote of the plaint situated at Village Mohabbatpur, Tehsil Adampur District Hisar as per jamabandi for the year 1978-79 and that the oral Will dated 20.02.1982 allegedly executed by Smt. Nimbo widow of Mohan Lal in favour of the respondents and mutation thereof bearing No.1766 dated 4.9.1983, were the result of fraud and misrepresentation and thus had no binding effect upon their rights.

Upon notice, the respondents contested the suit by filing

written statements. On framing necessary issues, both the sides led evidence in affirmative to their satisfaction. However, at the stage of rebuttal and arguments, the petitioner- plaintiffs moved an application for correction of Issue No.2 as to whether “Nimbo deceased had executed a legal and valid Will in favour of defendant as claimed” and to place its onus upon the respondents.

After hearing both the sides, the trial Court dismissed the aforesaid application of the petitioner vide impugned order dated 12.02.2018.

Learned counsel for the petitioner relying upon judgments of this Court in **Gurdial Kaur and another v. Chand Kaur (deceased) through LRs**, 2012(49) R.C.R. (Civil) 30, **Manohar Lal v. Kewal Krishan and others**, 2012(5) R.C.R. (Civil) 246 and a judgment of Hon'ble the Supreme Court in **Daulat Ram v. Sodha**, 2004(4) R.C.R. (Civil) 841, urged that the onus to prove as to whether a Will is genuine and valid document is always upon the propounder. Since respondents have staked their claim on the basis of the Will aforesaid, therefore, the trial Court ought to have asked them to discharge their onus by proving the genuineness and validity of the same. The trial Court has not framed the correct issue.

I have given considerable thought to the submissions made by learned counsel for the petitioner.

It is well settled that when the parties conclude evidence to their satisfaction after framing of issues, the question qua framing or non-framing of any proper issue or correct issue or placing upon its burden or shifting of onus upon any of the parties loses its significance. In the

instant case, admittedly, the parties have concluded their evidence. The petitioner moved an application for correction of Issue No.2 at the stage of rebuttal and arguments.

Undisputedly, the petitioner along with his nephews and sister-in-law claimed half share in the suit property on the basis of natural succession challenging the due execution of oral Will dated 20.02.1982 executed by Smt. Nimbo widow of Mohan Lal in favour of the respondents.

Since the petitioner has knocked the door of the Court, therefore, initial burden to prove that the Will executed by Nimbo in favour of the respondent was the result of fraud and misrepresentation and thus had no binding effect upon him and his co-plaintiffs lies upon them inasmuch as the burden never shifts and always lies on the plaintiff whereas onus keeps on shifting.

In other words, plaintiff has to discharge his initial burden to the satisfaction of the Court and in case he succeeds in doing so, then only onus shifts upon the other side to dispel as to whether Will in their favour was not surrounded by suspicious circumstances.

Facts and circumstances of aforesaid authorities relied upon by learned counsel for the petitioner are not identical to the facts of the present case, therefore, no benefit of the same can be given to the petitioner.

However, in the peculiar circumstances of the case, since the contesting respondents have staked their claim on the basis of oral Will dated 20.02.1982, therefore, the trial Court is directed to consider and see as to whether the contesting respondents have been able to lead any cogent and convincing evidence to dispel that the Will in their favour was not

surrounded by any suspicious circumstances at the time of final adjudication of the suit.

The revision petition is disposed of accordingly with the above direction.

February 26, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No