

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.1510 of 2018(O&M)
Date of Decision: 07.03.2018

Dilbag Singh

.... Petitioner

Versus

Manjit Kaur & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Ramesh Sharma, Advocate,
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India defendant No.2 has laid challenge to the order dated 14.02.2018 (Annexure P-7) of the trial Court allowing the application of the petitioner for adducing evidence and proving registered cancellation deed dated 06.08.2002 (Ex.P-1) executed by mother of the parties, whereby she cancelled her registered Will dated 18.03.2002 in favour of the petitioner and his brother defendant-respondent No.2.

Learned counsel for the petitioner *inter alia* contends that after hearing final arguments, trial Court had adjourned the case for pronouncement of judgment. However, prior to that date, respondent No.1-plaintiff moved an application for proving cancellation deed (Ex.P-1) by way of secondary evidence, which has been wrongly and illegally allowed by the trial Court vide impugned order, ignoring the fact that respondent No.1-plaintiff ought to have produced and proved the same in her affirmative evidence. The trial Court also failed to appreciate that the application to prove cancellation deed (Ex.P-1) was filed by respondent No.1-plaintiff at a very belated stage and was totally hopelessly time barred.

Having given considerable thought to the submission made by

learned counsel for the petitioner, this Court is not inclined to differ with the findings of the trial Court in the impugned order, inasmuch as vide impugned order, the trial Court has granted only formal permission to respondent No.1-plaintiff to prove cancellation deed by way of secondary evidence, which has already been proved on the record and has been exhibited.

More so, the petitioner has been granted liberty by the trial Court to cross-examine the witness of respondent No.1-plaintiff qua the secondary evidence. Therefore, in the considered view of this Court, no prejudice is going to be caused to the petitioner, rather the impugned order would help the trial Court in effective adjudication of the real controversy between the parties.

By this time, it is well settled that to impart justice, no litigant should be non-suited for technical reason. The endeavour of the Court should always be to do real justice to the person, who comes before it. In the instant case, whole controversy revolves around the inheritance of the mother of the parties, who are *inter se* real brothers and sisters. The petitioner along with his brother has staked his claim on the basis of registered Will allegedly executed by their mother, whereas the stand of respondent No.1-plaintiff is that their mother did not execute any Will and if there was any, the same was cancelled vide cancellation deed (Ex. P-1). Therefore, for effective adjudication, the production and proof of cancellation deed (Ex.P-1) by way of secondary evidence is very much necessary.

In view of discussion made above, this petition is dismissed.

07.03.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No