

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-1687-2018

Date of decision : 25.10.2018

Madan Lal

... Petitioner

Versus

Smt.Mamta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Avnish Mittal, Advocate
for the petitioner.
Mr.Mohan Singh Chauhan, Advocate
for respondents no.1 to 3.
Mr. Sanjiv Kumar Yadav, Advocate
for respondent no.4.

AMOL RATTAN SINGH, J.(ORAL)

By this petition the petitioner challenges the order dated 22.02.2018 passed by the learned trial Court, allowing respondent no.4 (defendant no.1 in the suit) to produce the original Will relied upon by the respondents-plaintiffs and now also seemingly being relied upon by the said respondent no.4-defendant no.1.

Mr.Mittal, learned counsel for the petitioner, submits that an application filed earlier by the said respondent, seeking to lead secondary evidence to prove the certified copy of the Will dated March 20, 1984 (stated to be executed by the father of the parties, i.e. Madho Ram), had been dismissed by the trial Court vide an order, Annexure P-6, dated 05.12.2017 and therefore a second application in a different form could not have been entertained by the trial Court.

Learned counsel for respondent no.4, on the other hand, submits that the application, Annexure P-7, is though seen to be worded as a second application, actually is an application seeking to prove the original Will dated 20.03.1984, by placing the same on record, it not being earlier available with the

said respondent (as contended), as it was in the possession of the plaintiffs, i.e. respondents nos.1 to 3 herein.

As it is the original will that is now sought to be placed on record, with a certified copy thereof already on record, I see no reason to interfere with the impugned order of the learned trial Court, to the extent of the original Will (as is contended to be so) being produced by defendant no.1, the said Will not stated to be any different from the certified copy as was led earlier by way of evidence by the plaintiffs.

However, as regards examination or recalling the witnesses as had testified in favour of the Will, that part of the order cannot be sustained, in view of the fact that the witnesses are actually the same as were shown to be the attesting witnesses in the certified copy of the Will and consequently, recalling them would be not just purposeless but would also reopen the matter at this stage for no reason.

Consequently, this petition is allowed to the aforesaid extent, that the impugned order is sustained as regards producing the original Will of the late Madho Ram (as is contended to be the original Will), with that part of the order set aside, by which the witnesses as have already examined have been allowed to be re-examined.

It is made clear that nothing stated hereinabove would be treated to be an observation of this Court either with regard to the genuineness of the Will sought to be produced, or otherwise.

(AMOL RATTAN SINGH)
JUDGE

October 25, 2018.

D.K./dinesh

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No