

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

C.R. No.5132 of 2016

Date of Decision.22.05.2018

Devinder Singh and another

.....Petitioners

Vs

Amritpal Kaur and another

.....Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Arihant Jain, Advocate and  
Mr. Arun Jindal, Advocate  
for the petitioners.

Mr. Amandeep Singh Talwar, Advocate  
for the respondents.

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**AMIT RAWAL J.(ORAL)**

The present revision petition is at the instance of the petitioners-defendants challenging the order dated 20.07.2016 (Annexure P-5) whereby the application submitted for recording statement of DW Dinesh Kumar Jain online (video conferencing) being the attesting witness of the Will propounded by the defendants, has been dismissed.

Mr. Arihant Jain and Mr. Arun Jindal, learned counsel appearing for the petitioners submitted that the respondent-plaintiff instituted the suit for separate possession of 1/4<sup>th</sup> share by way of partition of the property described in Annexure A and B devolved from common ancestor Sardar Puran Singh.

The petitioners-defendants filed the written statement and denied that the plaintiff is entitled to 1/4<sup>th</sup> share or entitled to possession, much less, inheritance of the estate of S. Puran Singh. In fact, husband of the plaintiff created a false document and also got mutation entered on the back of the defendants, for, Puran Singh had already executed a

Will dated 24.9.1984 as well as 24.03.1991. The plaintiff intentionally concealed the aforementioned Will and when the case was listed for the defendants' witness, an application (Annexure P-3) for recording statement of Dinesh Kumar Jain, attesting witness of the Will, online being a practicing Advocate on income tax side at Imphal, was submitted but the same after contest was dismissed. In support of his contention, he relied upon the judgment rendered by Division Bench of Delhi High Court in **International Planned Parenthood Federation (IPPF) Vs. Madhu Bala Nath AIR 2016 (Delhi) 71** to contend that the Code of Civil Procedure is procedural code and procedures are subservient to justice. With the development of law and technology, the Courts have to use procedure, which facilitates Courts in dispensing with speedier justice. It will save the time of the witness, who has to come all the way from Imphal, for, there is likelihood that the plaintiff may stretch the cross-examination for number of days and the witness would be prevented to discharge obligation towards his client being an income tax lawyer.

On the other hand, Mr. Amandeep Singh Talwar, learned counsel appearing on behalf of respondent No.1 submitted that the judgment relied upon by the counsel for the petitioner is with regard to dispute between husband and wife whereby the assistance of video conferencing for recording the evidence can always be availed of, but not in the case of Will as original Will has to be put to witness and in the absence of his physical presence, it would not be possible and rightly so, the application has been dismissed, thus, urges this Court for dismissal of the revision petition by upholding the order under challenge.

I have heard learned counsel for the parties, appraised the

paper book and the judgment cited at bar. There is no dispute to the ratio decidendi culled by Mr. Arihant Jain, for, it was the case where witness to be examined was located at London and it would have been expensive for him to travel to Delhi, particularly, when the facility of video link at Delhi was available. It was also a case where the witness would have suffered substantial cost of travelling and boarding. However, in the instant case, the petitioner-defendant had propounded the Will and Dinesh Kumar Jain, a practicing lawyer of income tax in Imphal is the attesting witness. He cannot be permitted to be examined through video conferencing as the opposite party can be prevented to put the original Will to the witness for the purpose of cross-examination and discharging the obligation towards his client.

At this stage, Mr. Amandeep Singh Talwar submitted that his client can compensate the witness of the petitioner-defendant in case he physically appears as a witness.

Keeping in view the fact that the respondent-plaintiff is willing to bear the travel and boarding expenses of the witness, the aforementioned prayer of Mr. Amandeep Singh Talwar is accepted for the purpose of cross-examination of the witness, Dinesh Kumar Jain, who is attesting witness to the alleged Will.

In view of the aforementioned fact, the order under challenge is upheld and the revision petition is disposed of in the aforementioned terms.

(AMIT RAWAL)  
JUDGE

May 22, 2018  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable      No