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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-491-2014 (O&M)

Date of decision : 20.02.2018

Ranjit Singh and others

... Petitioners(s)

Versus

Jang Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Pancher, Advocate
for the petitioners.

Mr. Rakesh Chopra, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 24.12.2013, whereby an application of the petitioners-defendants to prove the Will 17.02.1987 executed by the deceased Mangli widow of Hazura Singh in favour of her son, namely, Dial Singh son of Hazura Singh by way of secondary evidence has been dismissed.

Learned counsel for the petitioners-defendants submits that the respondents-plaintiffs instituted a suit claiming declaration to the effect that they are owners and in joint possession of the suit property mentioned at letter x below as per their respective shares i.e. 1/6th share of deceased Mangli widow of Hazura Singh by challenging the aforementioned Will dated 17.02.1987 as well as the mutation, to be null and void with a consequential relief of permanent injunction. The trial Court on the basis of

the pleadings of the parties framed the following issues:-

- “1. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled for injunction as prayed for? OPP*
- 3. Whether the suit is not maintainable? OPD*
- 4. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD*
- 5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 6. Whether the plaintiffs have concealed the material facts from the court? OPD*
- 7. Relief.”*

However, issue No.1-A regarding the Will was framed on 11.06.2011, thereafter the onus was, vide order dated 15.11.2013, shifted upon the petitioners-defendants. The additional issue placing the onus upon the defendants reads thus:-

“Whether Smt. Mangli executed a valid and legal Will dated 17.02.1987 in favour of Dayal Singh, fi so, its effect? OPD”

He further submits that since the original Will, aforementioned, was tendered before the revenue authorities for the purpose of effecting the mutation, in this regard, Kanungo was summoned, but showed inability to produce the Will, which is reflected from the zimini order dated 06.12.2013 (Colly). It is, in this background of the matter, the aforementioned application was filed. No prejudice would be caused to the respondents-plaintiffs as the petitioners-defendants would be first proving the existence and loss for the purpose of adjudication of the aforementioned application.

Mr. Chopra, learned counsel appearing on behalf of the respondents-plaintiffs submits that the defendants did not comply with the

requirement of Order 8 Rule 1 of the Code of Civil Procedure as all the parties were required to place on record the original document at the time of the filing of the written statement, much less, before framing of the issues. Even the photocopy of the Will is not on record. All these factors weighed in the mind of the Court below while dismissing the aforementioned application. The Court below also found that the witness Himat Singh, Kanungo, did not utter a word with regard to the original Will, therefore, the application was bereft of any explanation as the Will is forged and fabricated. An attempt has been made to prove the Will by way of secondary evidence, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that On demise of the testator-Mangli, the mutation proceedings were initiated before the Assistant Collector 1st Grade, Bassi Pathana, resulting into, passing of order dated 11.01.2000 (Annexure P-9). The aforementioned order was passed on the basis of the Will as both the witnesses of the Will also appeared before the authorities, but the fact of the matter is that the proceedings of the revenue court were not binding upon the Civil Court and it is, in this backdrop of the matter, the suit aforementioned was filed by the respondents-plaintiffs challenging the mutation as well as the Will in the year 2001. The trial Court has not taken into consideration the aforementioned order, much less, statement of Himat Singh in correct perspective. It is a fit where the application for secondary evidence should have been allowed subject to the rider of proving the existence and loss.

Keeping in view the aforementioned facts, the impugned order

under challenge is not sustainable in the eyes of law and the same is hereby set aside.

Let the exercise be done in accordance with law within a period of four months from the date of the receipt of the certified copy of this order.

The present revision petition is allowed in the aforementioned terms.

20.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No