

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

**CR No.4858 of 2017**

**Date of decision:11.12.2018**

Harjinder Kaur @ Manjinder Kaur and another ... Petitioners

Vs.

Harjinderpal Kaur and others ... Respondents

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

Present:- Mr. Rakesh Gupta, Advocate  
for the petitioners.

Mr. Gurcharan Dass, Advocate  
for respondents No.1 and 2.

Ms. Arshdeep Kaur, Advocate for  
Mr. Sukhit Singh, Advocate  
for respondent no.3.

**AMIT RAWAL J. (Oral)**

The present revision petition is directed against the impugned order dated 19.05.2017 (Annexure P-1), whereby, an application under Order 14 Rule 5 read with Section 151 of Code of Civil Procedure, submitted by the respondent-plaintiffs in a suit for declaration claiming ownership qua estate of Gurnam Singh for framing the issue of Will propounded by the defendants, has been allowed and the defendants had been called upon to lead evidence in the first instance.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the petitioners submitted that no doubt, the petitioner-defendants have propounded the registered Will dated 11.09.1989 of the deceased Gurnam

Singh but the defendants cannot be called upon to lead evidence in the first instance as the onus heavily laid upon the plaintiffs to prove the nature and character of the property to be ancestral, therefore, there is gross illegality and perversity.

Mr. Gurcharan Dass, learned counsel appearing on behalf of the respondent No.1 and 2/plaintiffs submitted that issues are to be framed from the pleadings of the parties. The trial Court abdicated in not framing the issue of Will propounded by the defendants. In this circumstances, the impugned order calling upon the petitioner-defendants to lead evidence cannot be faulted with.

I have heard the learned counsel for the parties and appraised the paper book. The plaintiffs have claimed the following relief in the suit:-

“plaintiffs are owners in possession of land to the extent of 1/7 share each in the land bearing khasra no.131//11/2-12-19/1-20/1-189//2/2-3/1-3/2-8/2-9-10/1-11/2-12-13/1- khewat no.540 khatuni no.577 vide jamabandi for the year 2006-07 situated in the area of village Kaunke-II, Tehsil Jagraon and the Will, if any alleged to have been executed by Gurnam Singh in favour of defendant no.1 and Bhupinder Sigh (deceased husband of defendant no.3) is illegal, null and void, forged and fictitious document not binding upon the rights of the plaintiffs in anyway and liable to be set aside. And the alleged mutation no.869 in favour of Parminder Singh, defendant no.1 and Bhupinder Singh is also illegal, null and void at law. And

mutation no.1979 in favour of defendant nos.2 to 4 is also illegal, void. In the alternative suit for joint possession of above said land to the extent of 1/7 share each. Alongwith consequential relief of permanent injunction restraining the defendants no.1 to 4 from alienating, transferring, disposing of said land in any manner or way to any person illegally, unjustly, without due course of law.

Or any other relief with the Hon'ble Court may deem fit and proper.”

whereas, the defendants in para 3 of the written statement in defence have propounded the Will which reads as under:-

*“3. Para no.3 is wrong and denied. Gurnam Singh did not die intestate. He had rather executed a valid registered Will dated 11.9.1989 Vasika no.45 bequeathing his property in favour of Bhupinder Singh deceased, husband and father respectively of the answering defendants to the extent of ½ share and in favour of Parminder Singh defendant no.1 to the extent of remaining ½ share. The Will was executed by Gurnam Singh deceased with his free consent, in his sound disposing state of mind and in lieu of services rendered to him by the legatees. The Will dated 11.9.1989 is a perfectly legal, valid and genuine document and the same was duly acted upon and given effect to by way of mutation of testamentary inheritance of Gurnam Singh in the revenue record. The plaintiffs have not*

*no locus standi to challenge the valid registered Will of Gurnam Singh.”*

The trial Court on the basis of the aforementioned pleadings, framed the following issues:-

- “1. Whether the plaintiffs are entitled to the decree of declaration as prayed for?OPP*
- 2. Whether the suit is time barred?OPD*
- 3. Whether the suit is not maintainable?OPD*
- 4. Relief.”*

Though it is the duty of the trial Court to frame the issue on the basis of the pleadings on which the parties were at variance but in case there is an omission, that omission can be remedied either on its own or on filing of the application by either of the parties as per the provisions of Rule 5 Order 14 CPC. It has been brought to the notice of this Court that suit is at the stage of plaintiffs' evidence. No harm and prejudice would be caused if the following issues by placing the onus on the defendants are framed:-

- i) Whether late Sh. Gurnam Singh had executed a valid and registered Will dated 11.09.1989, if so its effect?OPD
- ii) Whether the Will was executed for the purpose of legal necessity?OPD”

However, the impugned order directing the defendants to lead evidence is not in consonance with the provisions of Order 18 CPC as onus to prove the nature and character of the property to be ancestral laid upon the plaintiffs and they have to begin the case. The said direction is hereby

set aside.

The revision petition is disposed of in the aforementioned terms.

(AMIT RAWAL)  
JUDGE

December 11, 2018  
savita

Whether Speaking/Reasoned  
Whether Reportable

Yes/No  
Yes/No