

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

CR-5486-2017 (O&M)

Date of decision : 19.01.2018

Pardeep Kumar Gupta

..... Petitioner

Versus

Ved Parkash Mittal

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Avnish Mittal, Advocate for the petitioner.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Respondent does not appear despite service.

Heard.

Impugned in the present revision petition is the order dated 9.8.2017 (Annexure P-6), passed by learned Civil Judge (Junior Division), Ambala, vide which learned Judge, refused to frame the additional issue regarding the Will dated 22.12.2008, claimed by plaintiff-petitioner and also regarding the Will dated 4.10.1996 claimed by defendant-respondent.

A perusal of the plaint and the written statement shows that it is a simple suit for permanent injunction wherein the plaintiff claimed that he is in peaceful possession of the disputed property and should not be dispossessed. However, in the pleadings, he has claimed that he has become owner of the disputed property on the basis of registered Will dated 22.12.2008, executed by its owner namely Kuldeep Kumar. There is no

mention in the plaint that Kuldeep Kumar had any brother or sister or any other Class I and Class II heirs, who could have been necessary party in case the Will is to be adjudicated upon. The defendant in the written statement has claimed that they have a Will dated 4.10.1996 in their favour and that probate of the said Will has been granted by the Court of learned Additional District Judge, Ambala in favour of defendant vide order dated 24.10.2011 on account of which defendant is absolute owner in possession of the disputed property.

Learned counsel for plaintiff-petitioner claimed that plaintiff has filed an application to become party to the probate proceedings and the same was declined. Therefore, it is apparent that both the parties claimed possession on the basis of respective Wills in their favour. Though, in the present suit, injunction is sought on the basis of Will only, however, in view of the probate in favour of defendant, plaintiff was required to seek declaration that he has become owner in possession of the disputed property on the basis of the Will claimed by him. No such declaration was claimed. Therefore, learned trial Court was required only to decide as to who is in possession. If the Wills are also adjudicated upon, it may have the effect of recording a finding without hearing the necessary parties and without the plaintiff seeking declaration regarding his Will. In such eventuality, suit for mere injunction may not suffice and the injunction could be declined only on the ground that no declaration of ownership and possession has been sought on the basis of respective Wills.

It being so, there is no illegality or irregularity in the impugned order dated 9.8.2017 (Annexure P-6), passed by learned Civil Judge (Junior

Division), Ambala, refusing to frame the additional issue regarding the respective Wills. However, plaintiff-petitioner is at liberty to amend the plaint and seek declaration that he has become owner in possession on the basis of registered Will dated 22.12.2008. In that eventuality, if such amendment is sought, learned trial Court shall consider the same in accordance with law and if such amendment is incorporated and the issues are framed, then the learned trial Court shall frame issue regarding the Will dated 22.12.2008, claimed by plaintiff-petitioner and also regarding the Will dated 4.10.1996 claimed by defendant-respondent and the other consequential issues arising thereupon.

With the above noted observations, present revision petition stands dismissed.

(KULDIP SINGH)
JUDGE

19.01.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No