

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 204

CR-5538-2018

Date of decision : 17.09.2018

Surinder Singh

..... Petitioner

VERSUS

Pritam Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Satbir Rathore, Advocate, for the petitioner.

Mr. Dinesh Kumar Nagar, Advocate, for respondent No. 1.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 24.07.2018, passed by the Civil Judge (Junior Division), Dasuya (for short, the Trial Court), through which an application filed by the petitioner seeking to examine Gurdial Singh as a witness has been rejected.

The facts in brief which have been culled out after perusing the record and hearing learned counsel for the parties are that respondent No. 1-Pritam Singh filed a suit seeking therein joint possession of land detailed and described in the headnote (A) of the plaint. Possession of properties mentioned in the headnotes (B) and (C) of the plaint was also claimed alongwith a declaration to the effect that transfer deed dated 30.11.2006 be declared null and void. Consequential relief of injunction to restrain defendants No. 1 and 2 in the suit from alienating/transferring or creating any charge on the above properties was also sought.

On being put to notice, the petitioner, who was defendant No. 1 in the suit, appeared before the Trial Court and while denying the claim set up by respondent No.1/plaintiff *inter alia* set up a Will dated 22.10.1998

through which the petitioner claimed that his grand father Didar Singh had bequeathed the properties referred to in the headnote (A) of the suit to him. Thereafter the Trial Court framed issues and the parties led their respective evidence. However, when the suit was listed for final arguments, respondent No. 1 filed an application seeking therein framing of additional issues which was allowed on 21.02.2018 resulting in the framing of the following two issues: -

- (i) Whether Will dated 22.10.1998 is legal and valid? OPD.*
- (ii) Whether Will dated 22.10.1998 is forged and fabricated? OPP.*

Both the parties were granted one opportunity each to lead their evidence on the above issues. On one date the petitioner produced four witnesses who were also cross-examined on that very day. Thereafter the petitioner moved an application seeking to produce another witness namely Gurdial Singh, who had allegedly attested the aforesaid Will dated 22.10.1998. Such application was dismissed by the Trial Court, occasioning the filing of the present petition.

Learned counsel for the parties have been heard.

On 21.02.2018 two additional issues were framed by the Trial Court as to whether the Will dated 22.10.1998 was legal and valid and that whether the same was forged and fabricated. On one date the petitioner examined as many as four witnesses all of whom were also cross-examined on that very day itself. Thereafter, the petitioner seeks only one opportunity to examine one more witness namely Gurdial Singh, who is the attesting witness to the aforesaid Will.

In line with the principles of natural justice and not to preclude the petitioner from leading his evidence in the form of examination of an alleged attesting witness to the aforesaid Will, which is the bone of contention between the parties, as also in view of the peculiar facts of the present case where the issues with regard to the aforesaid Will in question were framed only on 21.02.2018 and that too on the asking of respondent No. 1, after setting aside the impugned order, I consider it just and appropriate to grant to the petitioner one and only one opportunity to produce his entire evidence. The same be done within fifteen days from today. Such opportunity is granted to the petitioner subject to payment of ₹15,000/- as costs to be paid to respondent No. 1.

Since the suit was filed in the year 2013, the Trial Court is requested to dispose of the same within six weeks from today in accordance with law.

17.09.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No