

In the High Court of Punjab and Haryana at Chandigarh

127

CR No. 5547 of 2018

Date of decision: 27.8.2018

SUKHWINDER SINGH

.....petitioner

Versus

JOGINDER SINGH @ JOGESHWAR NAND AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Arvind Kashyap, Advocate for the petitioner.

RAJ MOHAN SINGH, J (oral)

Petitioners have assailed the order dated 9.8.2018 passed by the Additional Civil Judge (Sr.Divn.) Fatehgarh Sahib, vide which the application for additional evidence (though wrongly mentioned under Order 41 Rule 27 CPC) was allowed.

Evidently, Swami Bodha Nand executed the Will dated 27.5.2010 in favour of defendant No.1 Joginder Singh. Two cases regarding the Will in question are pending. In one of the case, attesting witness of the aforesaid Will, namely, Vikramjit Singh has been allowed to be examined. In the present case, Vikramjit Singh has been allowed to be examined in additional evidence by way of giving two effective opportunities to defendants No.1 and 2 to prove the execution of Will by way of attesting witness, namely, Vikramjit Singh. It was recorded that no other witness is allowed to be examined by the defendants in additional evidence.

In my considered opinion, the indulgence granted by the trial Court for examination of Vikramjit Singh in additional evidence subject to payment of costs is not illegal as the trial Court can allow adducing of additional evidence in the interest of justice. It is not denied by the plaintiff that another suit titled 'Gaddi Paramhans vs. Joginder Singh' is pending in the Court. The documents regarding the said suit have already been placed by the defendants on record. Though the defendants were required to prove the execution of Will executed by Swami Bodha Nand in favour of Joginder Singh, but the trial Court has granted the indulgence in order to adduce the evidence of the Will by the attesting witness.

In view of ratio laid in **K.K.Velusamy vs. N. Palanisami**, (2011) 11 SCC 275, the indulgence shown by the trial Court cannot be held to be illegal. Even Court has the power to allow additional evidence not only if it requires such evidence 'to enable it to pronounce judgment' but also for 'any other substantial cause'. There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence 'to enable it to pronounce judgment', it still considers that in the interest of justice something which remains obscure should be filled up so that it

can pronounce its judgment in a more satisfactory manner.

The impugned order cannot be found to be the result of any error of jurisdiction.

Accordingly, this petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

August 27, 2018
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Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**