

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

C.R.No.5744 of 2017

Devender Kumar Vasisht

....Petitioner

Versus

Shri Krishan Kumar Vasisht and Ors.

....Respondents

Date of Order: 14.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Vij, Advocate for the petitioner.

Mr. Sudhir Aggarwal, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

The plaintiff-petitioner is aggrieved of the impugned order dated 02.08.2017 passed by the Civil Judge (Jr. Division), Gurugram whereby his application seeking re-framing of issue No.1 and changing its onus from plaintiff to defendant No.1 qua the will has been dismissed.

The plaintiff instituted the suit for declaration and permanent injunction claiming to be joint owner of the property on the ground that on the demise of late Ganga Sarup Vasisht, the property devolved upon the legal heirs by way of natural succession on the basis of a Will registered vide Vasika No.335.

The trial Court vide its order dated 12.10.2016 framed the following issues:

- “1. Whether the plaintiff is entitled to relief of declaration that Will bearing Vasika No.335 dated 30.05.2013 is illegal, null and void and liable to be set aside?OPP*
- 2. If above issue is proved, whether the plaintiff is entitled to decree of permanent injunction as*

prayed for?OPP

3. Whether the present suit is not maintainable in the present form?OPD

4. Relief.”

Learned counsel for the petitioner submitted that though the petitioner challenged the Will but he would be discharging his onus by leading direct and cogent evidence in support of averments made in the plaint. The onus always lies on the propounder of the Will to discharge the onus regarding the genuineness and authenticity of the Will, however, the trial Court erroneously rejected the application. In support, he relied upon **Mahesh Kumar (Dead) by LRs Vs. Vinod Kumar and Others, (2012) 4 Supreme Court Cases 387**. He submitted that the application was moved for framing of following issues:

“i) Whether the plaintiffs are entitled for a decree of declaration as prayed for?OPP

ii) Whether the Will bearing vasika no.335 dated 30.5.2013 executed by Sh. Ganga Saroop Vashisht is legal, valid and genuine document?OPD”

Learned counsel for the respondents submitted that the findings of the trial Court are perfectly legal and justified as the onus to prove the Will was upon the plaintiff since it was the plaintiff, who had challenged the Will and not the defendants. He submitted that the Will is a registered document, which carries presumption of truth, therefore, present petition deserves dismissal.

After hearing learned counsel for the parties and appraising the paper book, I find the pleas of learned counsel for the petitioner to be meritorious. As per Section 90 of the Indian Evidence Act, a registered Will does not carry the presumption of truth. In support, he relied upon

Bharpur Singh & Ors Vs. Shamsher Singh, 2009(1) Civil Court Cases

804 (SC) wherein Hon'ble the Supreme Court has held as under:

“The circumstances narrated hereinabove are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the Will had duly been proved or not.

It may be true that the Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with.”

Though the plaintiff has challenged the Will in the aforesaid suit but the onus lied on the defendant No.1, who as per the written statement, propounded the Will and in view of the ratio of law laid down in **Anil Rishi Vs. Gurbaksh Singh, 2006(3) RCR (Civil) 347**, the issue regarding the onus is no *res integra* as the issue to prove genuineness of the Will is always on the propounder. In the opinion of this court, no harm would be caused to the defendants if the additional issues are framed as both the parties will have opportunities to rebut the same. It is also not in dispute that in such kind of cases, the onus keeps on shifting.

As a sequel of what has been discussed hereinabove is sufficient to set aside the impugned order passed by the trial Court.

Accordingly, the petition is allowed and the trial Court is ordered to frame the additional issues extracted above.

March 14, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No