

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CR No.7148 of 2015 (O&M)

Date of decision: 26.02.2018

Rajesh Kumar and another

..... Petitioners

Versus

Bindu Sharma

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.S. Khehar, Advocate
for the petitioners.

Mr. J.S. Lalli, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-petitioners are in revision petition against the order dated 04.09.2015 passed by the learned trial Court allowing amendment of the plaint so as to include challenge to the Will dated 12.06.2006.

It is not in dispute that Om Parkash predecessor-in-interest of the parties to the suit was the owner of the property. The plaintiff, who is widow of son of Om Parkash, filed a suit for declaration claiming that she is exclusive owner in possession of the ground floor of the house in question on the basis of oral family settlement. The defendants contested the suit and pleaded that Om Parkash had executed a Will-testamentary document dated 12.06.2006. During the pendency of the suit, the plaintiff filed an application for permission to amend the plaint so as to challenge the Will dated 12.06.2006. The aforesaid application has been allowed by the Court.

Although, learned counsel for the petitioners has vehemently

argued that the amendment sought for so as to include challenge to the Will dated 12.06.2006 is barred by time, however, this Court considers that once the defendants had based their defence on the Will dated 12.06.2006, they were required to prove the execution of the Will in accordance with Section 68 of the Indian Evidence Act. Such being the position, the challenge to the Will was not really necessary.

In any case, the Court has only allowed the application qua amendment of the plaint. The issue of limitation would be considered by the Court at the time of final decision of the case.

Revision petition is dismissed.

26.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No