

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

160

CR No.7074 of 2018
Date of decision : 16.10.2018

Rajinder Singh

...Petitioner

Versus

Inderjit Singh and others

....Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:- Mr.K.S.Dhillon, Advocate
for the petitioner.

Harinder Singh Sidhu, J.

The petitioner is defendant in the suit filed by the plaintiff-respondents for declaration to the effect that they are owners in possession of land measuring 14 marlas being $\frac{1}{2}$ share of 1 Kanal 8 marlas comprised in Khewat Khata No.9/20, Khasra No.57//1(0-5), 57//2(1-3), situated within the revenue estate of village Shahi Majra (Tehsil Kharar) now Tehsil Mohali, District SAS Nagar on the basis of registered Will dated 10.3.1989 executed in favour of the plaintiffs. A declaration was also prayed for that the alleged agreement to sell dated 30.10.1990 and unregistered Will dated 30.10.1990 in favour of the respondent are illegal and null and void.

The present revision petition has been filed impugning the order dated 25.9.2018 (Annexure P/3) passed by Addl. Civil Judge (Sr. Divn.) Mohali, whereby, evidence of the defendant, has been closed by order.

It is the case of the petitioner that in order to prove the Will dated 30.10.1990 in his favour, the petitioner wanted to examine the two attesting witnesses namely, Karam Chand and Gurpreet Singh. Vide order

dated 8.5.2018, the said witnesses were summoned and the case was adjourned to 18.5.2018. Service of Karam Chand had been effected. Gurpreet Singh, the other witness remained un-served as he was stated to be abroad. However, Jagtar Singh son of Karam Chand appeared and informed the Court that his father Karam Chand was unable to appear due to medical reasons. The Court directed Jagtar Singh to produce the medical certificate indicating the medical inability of Karam Chand on the next date of hearing i.e. 29.5.2018. Karam Chand appeared before the Court on 24.7.2018. His counsel stated that he had been brought to the Court by 2-3 persons by physically carrying him. He was not well nor could he speak or recognize any person. On that date counsel for the petitioner made a statement before the Trial Court that “he does not want to examine any other witness except Sh.Gurpreet Singh, who is at present in California (USA)”. On that very date (24.7.2018), the evidence of DW-4 Gurmeet Kaur and DW-5 Dalwinder Singh was completed. The case was adjourned to 14.8.2018 for recording evidence of Gurpreet Singh. On 14.8.2018, the case was again adjourned to 25.9.2018 for defendant evidence at his own responsibility. The order dated 14.8.2018 further states that “no further opportunity would be granted for the same purpose again in any circumstance”. On 25.9.2018, learned counsel for the petitioner stated that Gurpreet Singh could not come from USA and further opportunity was sought for his examination. However, the request was declined and the impugned order closing the evidence of the defendant was passed. It was recorded that the petitioner had already availed as many as 8 effective opportunities but had been unable to conclude the evidence.

Learned counsel for the petitioner states that Gurpreet Singh

could not come present as he was in USA. He states that Gurpreet Singh would be visiting India in December, 2018 and he accordingly, prays for an effective opportunity to examine the said witness. Learned counsel states that since the other attesting witness to the Will is medically incapable to prove the document, it is very important that Gurpreet Singh be examined to prove the Will. He argued that if he is not so permitted, he would be seriously prejudiced.

Considering the aforesaid, the instant petition is allowed. Impugned order dated 25.09.2018 to the extent of closing evidence of the defendant-petitioner is set aside. The Ld. Trial Court may grant one effective opportunity to the petitioner-defendant for examining the attesting witness, Gurpreet Singh in the month of December, 2018. This shall be subject to payment of Rs.10,000/- as costs to the plaintiffs.

The Revision Petition has been disposed of without notice to the respondents to avoid unnecessary delay and expenses. However, if the respondents have any grievance, they are at liberty to file an appropriate application. If such application is filed the same be listed.

(Harinder Singh Sidhu)
Judge

16.10.2018

sd

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