

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.1090 of 2017 (O&M)

Date of decision:30.01.2019

Gurpreet Singh

... Petitioner

Vs.

Manjinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harshit Jain, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 17.11.2016 whereby an application for reframing of issue with regard to Will dated 11.06.2003, at the appellate stage to be forged and fabricated, has been dismissed.

Mr.Harshit Jain, learned counsel for the petitioner-plaintiff submitted that plaintiff instituted the suit for declaration challenging the mutation on the basis of Will and prohibitory injunction. The defendants propounded the Will and claimed to have inherited the estate of testator. The trial Court on the basis of pleadings framed the following issues:-

“i) Whether the plaintiff is entitled to declaration to the effect that mutation no.3708 of inheritance of Sh. Raghubir Singh qua suit property is illegal, null and void and liable to be set aside?OPP

- ii) *Whether the plaintiff is entitled to the declaration that the Will allegedly executed by Raghubir Singh has no effect upon the rights of plaintiff i.e to the extent of 1/4th share in the suit property on the basis of natural succession?OPP*
- iii) *Whether the plaintiff is entitled to the declaration that he is owner in possession of 1/4th share out of suit property, fully detailed in head note A of the plaint? OPP*
- iv) *Whether the plaintiff is entitled to injunction restraining the defendants from dispossessing and causing interference in his peaceful possession to the extent of 1/4th share in the suit property and for restraining the defendant no.1 from alienating the suit property?OPP*
- v) *Whether the suit is not maintainable in the present form?OPD*
- vi) *Whether the plaintiff has no cause of action to file the present suit?OPD*
- v) *Relief.”*

but no issue with regard to Will being forged and fabricated was framed. However, the parties led evidence, resulted into dismissal of the suit. However, at appellate stage, an application for reframing of the issue has been filed but the same has erroneously been dismissed. Even the provisions of Order 41 Rule 25 CPC have also been referred to.

As per office report, respondents have been served. However, there is no representation on their behalf.

I am afraid the aforementioned provisions would not come to the aid. At the time of passing of the judgment and decree, the parties were alive to the situation and had led the evidence. Even the original copy of the Will was not attached to the written statement, the petitioner-plaintiff had the opportunity to belie the Will which was proved through the testimony of witness DW1. The trial Court found the compliance of provisions of Section 63(c) of Indian Succession Act and Section 68 of Indian Evidence Act.

Be that as it may, there was no necessity for the petitioner to move an application. In my view, the impugned order declining the application for reframing of the issue does not suffer from any illegality and perversity.

Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

January 30, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No