

**221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.2857 of 2018
Date of Decision:30.10.2019**

AMARJIT KAUR @ BHOLI

...Petitioner

Versus

BALDEV SINGH @ MATTA SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajan Bansal, Advocate
for the petitioner.

Mr. P.S. Dhaliwal, Advocate
for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 10.04.2018 passed by the Civil Judge (Junior Division), Barnala (for short-the Trial Court) dismissing an application filed by the petitioner under Order 14 Rule 5 CPC through which he has sought to amend issue No.3 to the effect that as to whether the Will in question dated 05.06.2009 was duly executed by Pakhar Singh and was his last valid Will in favour of the respondent/plaintiff.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 2013 the respondent filed a suit seeking therein to be declared owner in possession of several properties which were detailed and described in the head-note of the

plaint (for short-the suit properties). Such claim of the respondent was based on a registered Will dated 05.06.2009 of Pakhar Singh s/o Pannu Singh. Mutation No.2323 dated 27.10.2011 through which the suit properties, which were earlier owned by Pakhar Singh, had been mutated in favour of petitioner/defendant-Amarjit Kaur @ Bholi was also challenged. Possession of the suit properties was also sought.

On being put to notice, the petitioner who was the defendant in the suit, appeared before the Trial Court and contested the respondent's suit. It was *inter-alia* submitted by the petitioner that the Will of Pakhar Singh which was being relied upon by the respondent was forged and fabricated.

On the disputes between the parties, in the year 2013, the Trial Court framed issues on which both the parties led their entire evidence. When the suit was listed for final arguments, an application was filed by the petitioner under Order 14 Rule 5 CPC seeking therein to amend issue No.3 to the effect as to whether the Will dated 05.06.2009 of Pakhar Singh was his last valid Will in favour of the respondent/plaintiff. Such application was dismissed by the Trial Court through the order under challenge in the present proceedings.

Mr. Rajan Bansal, who appeared on behalf of the petitioner submitted that the respondent's suit was primarily based on a registered Will dated 05.06.2009 of Pakhar Singh which was a forged and fabricated document. Issue No.3 which had been framed by the Trial Court in the year 2013 was to the effect as to whether the Will dated 05.06.2009 was forged and fabricated and the onus to prove such issue was put on the petitioner/defendant. According to Mr. Bansal issue No.3 should have been as to whether the Will dated 05.06.2009 was duly executed by deceased

Pakhar Singh in favour of the respondent/plaintiff and was his last valid Will and the burden of proving such issue should have been placed on the respondent/plaintiff. It was further submitted that it was the core issue between the parties and since the respondent had propounded the Will, the onus should have been cast on him to prove the same.

Mr. P.S. Dhaliwal who appeared for the respondent countered the afore-submissions by contending that the issue sought to be framed by the petitioner was already covered under issues No.1 and 3 as framed by the Trial Court way back in year 2013 and that the petitioner was estopped from seeking framing of a new issue at the fag end of the trial as no objection had been raised on his behalf at the time when the issues were framed by the Trial Court in the year 2013.

The respondent's suit through which he seeks to be declared owner of the suit properties is primarily based on a registered Will dated 05.06.2009 of Pakhar Singh.

According to the petitioner/defendant the aforesaid Will is forged and fabricated.

In view of the disputes between the parties, way back in year 2013, the Trial Court framed the following issues:-

1. *Whether the plaintiff is entitled to declaration to be owner of the suit property on the basis of registered Will dated 5.6.2009? OPP*
2. *Whether mutation No.2323 dated 27.10.2011 entered in the name of defendant is null and void and has no effect in rights of the plaintiff? OPP*
3. *Whether the Will dated 5.6.2009 is forged*

and fabricated? OPD

4. *Whether the suit of the plaintiff is not maintainable in the present form ? OPD*

5. *Whether plaintiff has no cause of action to file the present suit ? OPD*

6. *Whether the defendants are entitled to get compensatory cost U/S 35 CPC ? OPD*

7. *Relief.”*

At the time the above quoted issues were framed no objection was raised by or on behalf of the petitioner.

Thereafter as per afore-quoted issues both parties led their respective evidence. When the suit was listed for final arguments, an application was filed by the petitioner under Order 14 Rule 5 CPC through which he sought to re-frame issue no.3 as according to him the same should have been as to whether the Will dated 05.06.2009 was duly executed by Pakhar Singh in favour of the respondent/plaintiff and that it was his last valid Will in favour of the respondent with the onus of proving the same on its propounder i.e. the respondent/plaintiff.

Issue No.1, as quoted above, is as to whether the plaintiff is entitled to be declared owner of the suit property on the basis of registered Will of Pakhar Singh dated 5.6.2009. The onus to prove the same is on the respondent/plaintiff. Thus, the respondent/plaintiff, as the propounder of the Will, would be entitled to the sought declaration only if he proves the registered Will of Pakhar Singh dated 05.06.2009 as legal and valid.

Similarly, issue No.3 as framed by the Trial Court in the year 2013 is also found to be correct. The case set up by the petitioner/defendant in her written statement was that the Will of Pakhar Singh dated 05.06.2009

being relied upon by the respondent/plaintiff was forged and fabricated. That being so, to prove whether it was actually forged and fabricated, the onus would be on the person who asserts the same.

In view of the above, the impugned order warrants no interference especially when the issues in the present case were framed by the Trial Court way back in the year 2013 without any objection by or on behalf of the petitioner and that in March 2018 when both the parties had led their entire evidence and the suit was posted for final arguments the petitioner filed an application seeking therein re-framing of one of the issues.

Dismissed.

October 30, 2019

Jyoti-IV

**(DEEPAK SIBAL)
JUDGE**

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