

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Revision No.4950 of 2017  
Date of Decision: April 22, 2019

Anil Kaushik

...Petitioner

Versus

Sonia Sharma & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr. Namit Gautam, Advocate,  
for the petitioner.

Mr. Sherry K. Singla, Advocate,  
for respondent No.1.

\*\*\*\*\*

**AMIT RAWAL, J.(Oral)**

The present revision petition is directed against the impugned order, whereby the application of the petitioner-defendant No.1 to take assistance of an expert for proving the Will dated 19.06.2009 in terms of additional issue No.2-A, has been declined.

Mr. Namit Gautam, learned counsel for the petitioner-defendant No.1 submitted that the respondent-plaintiff filed a suit for separate possession to the extent of 1/6<sup>th</sup> share by way of partition by metes and bounds. Petitioner filed the written statement and wanted to seek amendment of the written statement by setting up a counter claim, but the application moved in this regard was rejected. However, this Court vide order dated 22.03.2016 granted the permission by setting up the counter claim. On the basis of the aforementioned counter claim, the trial Court, on

05.07.2016, framed the following additional issue:-

*“2(A) Whether deceased Ravinder Nath had executed the Will dated 19.06.2009 in favour of defendants no.1 & 2? OPD”*

Defendants closed the evidence and tendered documents on 26.10.2016, but on the same date, moved an application though had already examined the attesting witnesses and the Deed Writer, but could not examine the expert. Even if the plaintiff has brought on record the report of an expert in some criminal case, it would not assist the court.

Mr. Sherry K. Singla, learned counsel representing respondent No.1-plaintiff submitted that it is an attempt to delay the adjudication of the suit which is pending since 2012. No doubt, onus of issue No.2A was upon the defendant-counter claimant, but he failed to discharge the same by leading evidence in affirmative and it tantamounts to fill up the lacunae and take away the value right.

I have heard the learned counsel for the parties and appraised the paper book.

The factual aspects and the events taken place during the pendency of the suit are not in dispute. The additional issue was framed in July, 2016 and the evidence was closed in October, 2016 and it cannot be said that the defendant in terms of the counter claim had led evidence after having availed numerous opportunities. It is a matter of record that the statements of the attesting witnesses have already come on record and report of the expert in some criminal proceedings. The Court can evaluate the aforementioned evidence plus the evidence intended to be led by way of additional evidence for adjudication of the lis whether it is a case of declaration of the ownership or otherwise by metes and bounds.

For the reasons mentioned above, the impugned order is set-aside. Petitioner-counter claimants is granted two effective opportunities to

lead evidence in terms of the additional evidence and similarly two effective opportunities to the respondent-plaintiff. The trial Court shall make an endeavour to decide the suit as early as possible. Let this exercise be undertaken within a span of three months from the date of receipt of certified copy of this order.

Revision petitions stands allowed subject to payment of ₹7,000/- as costs.

**April 22, 2019**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

|                                  |               |
|----------------------------------|---------------|
| <b>Whether speaking/reasoned</b> | <b>Yes/No</b> |
| <b>Whether Reportable:</b>       | <b>Yes/No</b> |