

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

**C.R. No.5969 of 2017 (O&M)
Date of Decision.22.02.2019**

Usha Devi and another

...Petitioners

Vs

Parmod Kumar and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Tacoria, Advocate
for the petitioners.

Mr. Anil Mehra, Advocate for
Mr. Kuldeep Tiwari, Advocate
for respondents No.1, 3 to 10, 17 to 23, 33 and 34.

-.-

AMIT RAWAL J. (ORAL)

C.M. No.28051-CII of 2018

For the reasons stated in the application, order passed by
this Court on 18.12.2018 is recalled and the revision petition is
restored to its original number.

Application is allowed.

With the consent of counsel for the parties, the revision
petition is taken up today itself for final disposal.

C.R. No.5969 of 2017

The present revision petition is directed against the
impugned order dated 24.08.2017 (Annexure P-7) whereby
application of the petitioners-plaintiffs for taking assistance of the
expert for the purpose of ascertaining the veracity of the Will dated
18.12.1975 along with sale deed dated 29.03.1960 for comparison of
signature of Pannu Ram @ Panna at the stage of plaintiffs' evidence
had been dismissed.

Mr. Tacoria, learned counsel appearing on behalf of the petitioners submitted that plaintiffs are none else but the grand daughters of Pannu Ram and filed suit for joint possession on various grounds by challenging the Will executed by Pannu being null and void and sale deeds *ibid* including the sale deed dated 06.11.1986. The trial Court erroneously rejected the application by forming an opinion that plaintiffs did not plead fraud and misrepresentation and the aforementioned question cannot be looked into at this stage. Plaintiffs cannot be prevented to lead evidence, though onus is always on the propounder of the Will but once challenge has been made to the Will, plaintiffs are required to lead evidence in affirmative, thus, the impugned order suffers from infirmity.

Mr. Anil Mehra, learned counsel appearing on behalf of respondents No.1, 3 to 10, 17 to 23, 33 and 34 opposes prayer of Mr. Tacoria by supporting the order under challenge and submitted that the new plea cannot be introduced at the stage of plaintiffs' evidence without seeking amendment. Unless and until, fraud and misrepresentation has not been proved or pleaded, plaintiffs cannot be permitted to take assistance of the expert, as the veracity of the Will has been upheld in Civil Suit No.478 of 1990 decided on 06.01.1996, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. The judgment and decree dated 06.01.1996 passed on during the course of hearing revealed that plaintiffs were not parties. Defendants can always take assistance of

the judgment rendered in some other proceedings in accordance with law but finding recorded by the trial Court by declining the relief that the plaintiffs had not taken plea of fraud and misrepresentation is too far fetched, for, pleadings as per Order 6 Rule 2 CPC have to be concise and evidence is not required to be pleaded. The expression null and void is of wide amplitude.

Without commenting further, I am of the view that plaintiffs, who have already challenged the Will, cannot be prevented to take assistance of the expert that too at the stage when they are leading evidence. The order under challenge suffers from illegality and infirmity and accordingly set aside. The application of the petitioners-plaintiffs for taking assistance of expert is allowed. Resultantly, the revision petition is disposed of.

(AMIT RAWAL)
JUDGE

February 22, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No