

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.168 of 2020

Date of Decision:13.1.2020

Manish Aggarwal

...Petitioner

Versus

Vikas Aggarwal and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Tanmoy Gupta, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. This revision petition has been filed for setting aside the impugned order dated 12.12.2019 passed by the trial Court dismissing the application under Order 6 Rule 17 of the CPC for amending the plaint filed by the plaintiff-petitioner.

2. Mr.Bhupinder Singh, Advocate has caused appearance on power of attorney on behalf of the respondents, though he is not on caveat.

3. Heard learned counsel for the parties.

4. The testator is alive, therefore, there is no question of challenge to a testamentary Will, unless the contents are used for collateral purposes in proof of some other fact, which appears not to be the case set up. In this case, the registered Will dated 4.4.2011 cannot be used as a document to define the property rights of the beneficiaries since the testator is alive. No right, title or interest accrues to anyone under a Will which will come into operation only when the testator passes away.

5. Notwithstanding anything, the trial Court will not use this Will

for determining the rights over property in the suit and depend on other evidence adduced by the parties but may take a look at it for limited purposes, at its discretion, if a peep is required into it to decide any issue on facts and if it has any material bearing on the case. The testator is himself contesting the Will, impleaded as defendant No.2 in the suit and he may take whatever stand he wishes to.

6. The defendants have introduced this Will in the list of documents relied upon and the trial Court has proceeded to take cognizance of this documentary evidence. The plaintiff witness has to be re-examined on 14.1.2020 as ordered by the court below, while some other plaintiff witnesses are still to be examined.

7. In view of these facts and circumstances, the trial Court will defer the re-examination to a short date to await the availability of a certified copy of this order so that it knows how to proceed and what to do next, in expectation of the outcome of this litigation.

8. The trial Court may then re-examine PW2-Devi Ram Goyal but will disallow all irrelevant questions that may be put to the witness/es by the defendants' counsel which may appear to touch upon the succession and inheritance rights of the parties upon the inconsequential Will, which may be a registered one quite obviously but can be changed at any time by the testator during her life time by making another Will to exclude the line of succession.

9. The plaintiff-petitioner has no right to challenge the Will before the death of the testator and the trial Court judgement is justified in dismissing the application for amendment of plaint at this stage. There is no error or legal infirmity found in the reasoning of the trial Court. The plaint

is not to be amended. The re-examination shall go on, subject to the observations made on the Will dated 4.4.2011 as mentioned above.

10. The petition is dismissed accordingly.

January 13, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No