

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1567 of 2020

Date of Decision:16.3.2020

Ram Chander and others

...Petitioners

Versus

Raj Bala and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.S.S.Sahu, Advocate
for the petitioners

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for setting aside the order dated 3.2.2020 (Annx.P1), passed by learned Additional Civil Judge (Senior Division), Fatehabad, whereby the application moved by the petitioners seeking permission to lead secondary evidence has been rejected.

2. The pedigree table has been produced on a sheet of paper, in the Court today by learned counsel for the petitioners for assistance on the contention regarding the Will No.92 dated 19.12.1973, executed by late Ami Chand, in favour of Ram Partap his adopted son and son of his brother Narsi. Het Ram had two sons, namely, Narsi and Ami Chand. Narsi was married and had four sons and two daughters. The eldest was Ram Partap. Ami Chand was a bachelor and died issueless on 22.6.1991. In his life time, Ami Chand adopted Ram Partap, son of his brother Narsi according to the associated rituals and ceremonies of giving and taking the boy in adoption.

3. The petitioning defendants, who are the offspring of late Narsi, plead and assert in their written statement filed to contest the suit filed by the plaintiffs [at page 39-40 of the paper-book], the latter claiming rights in

the property of Narsi by denying adoption, that the entire circumstances regarding the adoption was in accordance with law. As a result, Ram Partap became the son of Ami Chand. Ram Partap married Sajna who bore him three sons and two daughters. His wife Sajna died. At this stage no comment can be made on this issue in revision.

4. Presently, Raj Bala, daughter of Krishna, daughter of Ram Partap and Sajna and her offspring have brought this suit claiming rights in the property of Narsi, naming the petitioners as the defendants. The defendants have been making unsuccessfully applications for exhibiting the Will No.92 dated 19.12.1973. Photocopy of the said Will was produced on file on 9.3.2016 with the written statement. The defendants seek to lead secondary evidence to prove the Will to claim exclusive right in the property left behind by Ami Chand, the adoptive father of their forebear. This was the third attempt to do so, as recorded in paragraph 11 of the impugned order dated 3.2.2020. Without going into the other two applications, the learned Civil Judge (Senior Division), Fatehabad, in the order dated 3.2.2020 has recorded in paragraphs 11 and 12 as follows:

“11. After considering the arguments of learned counsel for the parties and having gone through the case file carefully and thoroughly, I am of the considered view that the present application deserves for dismissal and filed by the applicant only to linger on the proceeding of this case. Admittedly, it is third application moved by the applicant/defendant for proving the alleged Will, whereas, it is admitted by the plaintiff that their father received the landed property of Ami Chand, who executed Will in favour of their father. Perusal of the photocopy of the Will placed on 9.3.2016 reveals that the Will No.92 dated 19.12.1973 was executed by Ami Chand son of Het

Ram in which he got scribed that he is unmarried and having no idea of marriage in future, therefore, there is no question for any issue. Therefore, he in his life time, executed the present Will in favour of Ram Partap son of his real brother Narsi Ram aged 30-32 years and after his death his nephew Ram Partap son of Narsi shall be owner of his moveable and immovable property situated in village Jandwala Sautar and Ayalki, Tehsil Fatehabad, Distt. Hisar.

12. Perusal of the abovesaid contents of the Will, it is not a document for proving adoption of Ram Partap as alleged by the defendant in his written statement. Moreover, the above said Will is admitted by the plaintiff, therefore the document which is admitted by the opposite party does not required to be proved by producing evidence.”

5. The learned trial Court has proceeded on the correct legal position in making the order observing that a document which has been admitted by the opposite party, does not require to be proved by way of evidence. The impugned order in fact, favours the petitioners. This is for the reason that even if the photocopy of the Will was produced with the written statement, without refutation or rebuttal, then there is no need for leading secondary evidence to prove the same. The primary evidence, in whatever shape placed on judicial file by way of photocopy, is acceptable to the plaintiffs.

6. Therefore, I find no reason to interfere in this petition and endorsing the view of the learned Civil Judge (Senior Division), Fatehabad on this point, accepting the fact that there is no triable dispute regarding the testamentary will and therefore, it is deemed to be automatically exhibited and shall be treated as such. However, the issue of adoption, if any, will

obviously go to trial according to pleading and evidence in support thereof depending on the oral testimonies and documentary evidence, if any, and other corroborative evidence or any relevant material to be adduced by the defendants for the full and complete adjudication of the rights in the suit property. The observation of the Civil Judge that the Will is not a document for proving adoption will be read accordingly and not as an expression of final opinion as it is made at an interim stage and could have been avoided. The ultimate findings can come only after a full dress rehearsal of the evidence adduced by the parties.

7. This order has been passed *ex parte* respondents on the strength of declarations and the findings of the learned trial Court without causing them any prejudice. They are however free to make an application in this petition, if they are aggrieved by this order.

8. With these observations, directions and reservations, the petition is disposed of.

March 16, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No