

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

Date of Decision:4.2.2020

Civil Revision No.6773 of 2019 (O & M)

Gurjit Singh

...Petitioner

Versus

Suresh Kumar and others

...Respondents

Civil Revision No.6785 of 2019 (O & M)

Gurjit Singh

...Petitioner

Versus

Suresh Kumar

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Chetan Bansal, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. This order shall dispose of two revision petitions bearing CR No.6773 and 6785 of 2019, arising out of the similar impugned orders of even date.
2. Prayer in these petitions is for setting aside the order dated 9.10.2019, passed by the learned Civil Judge (Junior Division), Amritsar, whereby application filed by the petitioner under the provisions of Section 45 of the Indian Evidence Act, 1872 (for short, "the Act") has been dismissed.
3. Heard Mr Bansal for disposal of the petitions by remand.
4. There is a patent defect in the order dated 9.10.2019 passed by

the Civil Judge(Jr.Divn.) Amritsar, as the most vital fact has not been noticed, dealt with and considered, that is, whether production summons were issued to Rakesh Kumar, Advocate, who is one of the attesting witnesses to the testamentary will dated 20.4.2004 of Sukhdeep Kaur propounded by the plaintiff-petitioner. And were any steps taken by the plaintiff and the Court to effect issuance and proper service of summons personally on Rakesh Kumar Advocate, to secure his presence by compelling his attendance for testifying on oath regarding the making of the Will in proof of compliance of the mandatory provisions of the Indian Evidence Act, 1872. The second attesting witness was dead.

5. The case of the plaintiff-petitioner in the application is for comparison of the signatures of the testator of the Will i.e. deceased Sukhdeep Kaur with her admitted signatures on a plaint and an affidavit filed in some other suit by resting his arguments on Section 67 of the Act. Scrupulous compliance of the provisions of Sections 67, 68 and 69 of the Act is mandatory for proving a testamentary disposition of property by Will.

6. The trial court has refused to entertain the application/s and has dismissed them without finding out as a fact as to what steps were taken to summon the attesting witness for which the record of service has to be seen. The infirmity is incurable in revisional jurisdiction under Article 227 of the Constitution except to send the issue back to be re-examined by the learned trial Court on remand on the basis of record, given that at least one attesting witness has to come forward to prove a Will if he is alive.

7. Consequently, both the petitions are allowed. The impugned orders dated 9.10.2019 passed by the learned Civil Judge (Junior Division), Amritsar, are set aside.

8. The cases are remitted to the learned Civil Judge (Junior Division), Amritsar, to pass a fresh order in them in accordance with law on the applications presented under Section “45” of the Act.

9. If the plaintiff took no steps towards service of summons on the attesting witness Rakesh Kumar, Advocate then the effect may be independently seen by the trial court.

10. In case the evidence before the trial Court stands closed by the order of the Court, that order shall be recalled on production of the certified copy of this order.

February 4, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No