

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

CR-646-2021

Date of Decision:06.04.2021

Mohan Singh

...Petitioner

Versus

Richhpal Singh and others

...Respondents

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present: - Mr.Sanjay Verma, Advocate, for the petitioner.

ARUN MONGA, J. (ORAL)

The petition herein is directed against an order dated 09.3.2020 passed by the trial Court vide which an application filed by the petitioner under Order 14 Rule 5 of the CPC for framing specific additional issue in respect of a Will dated 07.01.2011 has been dismissed.

2. To be noted that the entire civil suit in question, is for declaration and consequential relief qua a Will dated 70.01.2011.

3. Having perused the contents of the plaint and also the orders impugned herein, I am of the view that no interference is called for. It is but natural that the suit for declaration cannot be adjudicated without there being findings with regard to the genuineness or otherwise of the Will in question. Issue No.1 already covers that aspect of the matter.

4. Even otherwise learned trial Court has rightly observed as below:-

“Having heard the rival contentions of learned counsel for both the parties and going through the case minutely, this court is of the considered view that the present application under Order 14 Rule 5 of CPC has been moved on behalf of the applicants/defendants No.2 to 4 for framing of additional issues that alleged “Will” dated 07.01.2011 is forged, fabricated and result of fraud and cheating, the suit is barred under Order 7, Rule 1, 11 and 14 CPC, suit is false, fictitious, vexatious, malicious, filed to harass the defendants and the plaintiff has affixed the advolurem court fee on the

plaint. Since, the present suit has been filed by the plaintiff for seeking relief of declaration as well as permanent injunction. The suit of the plaintiff is based upon the facts that the “Will No.493/3 dated 07.01.2011 was executed by deceased Smt. Mahender Kaur in favour of the plaintiff on 7.1.2011. Since onus of proving the “Will No.493/3 dated 7.1.2011” is on the plaintiff. First onus of plaintiff is to be discharged then automatically contrary onus shifts upon defendant. In other words the onus is upon the plaintiff that the “Will No.493/3 dated 7.1.2011” is genuine after discharge of the burden of proving the same, the onus will be shifted upon the defendants. Remaining issues are already covered in other issues. Therefore, there is no need to frame additional issues.”

5. I find no flaw in the aforesaid observations of the trial Court. In the premise, the application filed by the petitioner has already been dismissed.

6. Learned Court below has committed no irregularity warranting the interference of this Court.

7. Dismissed.

(ARUN MONGA)
JUDGE

06.04.2021

Vivek