

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

**Civil Revision No. 2508 of 2021
DATE OF DECISION :- October 29, 2021**

Smt. Kashmiri and another

...Petitioners

Versus

Kumar Pal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. R.S. Mamli, Advocate for the petitioners.

The case has been taken up through Video Conferencing.

The issues in this case do not appear to have been framed properly, inasmuch as the negative onus has been placed upon the plaintiff for proving that Will set up by the defendants is illegal, null and void. Onus should have been on the propounder to prove that the testator had executed a legal and valid Will in favour of the beneficiary. The issues seem to have been framed in a mechanical manner without due application of mind. Resultantly, some complication may arise with regard to affording opportunities to the parties to lead evidence and in deciding the case properly.

In the present case, the defendants who are revisionists before this Court are feeling aggrieved by the order passed by the trial Court dated 4.10.2021 allowing application for producing Handwriting and Finger Print Expert in rebuttal evidence. To avoid unnecessary confusion and to enable the Court to decide the matter properly after affording adequate

opportunities to the parties to lead evidence, the present writ petition is disposed of directing the trial Court to consider the aspect of reframing of issues in view of pleadings of the parties putting proper onus of proof upon the parties. Issues as to whether plaintiffs are entitled to decree for declaration or plaintiffs are entitled to decree for permanent injunction may not be framed because such issues are covered by the relief clause and framing such type of issues only show that those have been framed without looking into the pleadings of the parties properly. As already observed, the issue with regard to execution of Will is to be framed putting onus of proof on the propounder and not by way of framing issue putting negative onus upon the party contesting the execution of the Will. The trial Court may look into the matter in light of the observations so made and then proceed further in accordance with law.

**(H.S. MADAAN)
JUDGE**

October 29, 2021

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No