

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

CR-3205 of 2021 (O&M)

Date of decision: 09.12.2021

Sukhwinder Singh Jhalli

...Petitioner

Versus

Ranjit Kaur and others

...Respondents

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

Present: Mr. Rahul Rampal, Advocate for the petitioner.

H.S. MADAAN, J.

1. This revision petition is directed against order dated 09.11.2021 passed by Addl. District Judge, Ludhiana, vide which an application under Order 6 Rule 17 read with Section 151 CPC filed by petitioner Sukhwinder Singh Jhalli-defendant No.1 in the civil suit had been dismissed.

2. Briefly stated facts of the case are that, Smt. Ranjit Kaur, aged about 84 years, widow of late Sh. Jaswant Singh Jhalli, resident of Village Kanech, Tehsil and District Ludhiana, having residence in United Kingdom, England also, had brought a suit against Sukhwinder Singh Jhalli-son, Manjit Kaur Jhalli-wife and Jaswinder Kaur, Preet Kamal Kaur and Surinder Kaur -daughters of late Sh. Hadev Singh Jhalli, pre-deceased son of the plaintiff, craving for issuance of a declaration to the effect that plaintiff and defendants are joint owners

to the extent of 1/6 share each in the property left by late Sh. Hardev Singh Jhalli and mutation No.830 qua inheritance of late Sh. Hardev Singh Jhalli obtained by Sukwhinder Singh Jhalli in his name exclusively on the basis of any alleged Will or instrument propounded by him was illegal, null and void; the plaintiff had sought consequential relief of joint possession and permanent injunction etc.

3. On notice, defendant No.1 had appeared through attorney Sh. Darshan Singh and filed written statement, contesting the suit, claiming that he had inherited that property exclusively from his deceased father and the plaintiff and other defendants have no right or interest therein; he defended the impugned mutation as legal and valid, sanctioned on the basis of a legal and valid document and not on forged and fabricated document; he denied that the mutation had been sanctioned in the name of other defendants on a non-existing Will; he prayed for dismissal of the suit. Defendants No.2 to 5 had not put in appearance in the trial Court, as such, were proceeded against ex parte.

4. After contest between plaintiff and defendant No.1, the suit of the plaintiff was decreed, vide judgment and decree dated 27.02.2015, passed by Civil Judge (Jr. Divn.) Ludhiana. Resultantly, the plaintiff and defendants were declared as joint owners to the extent of 1/6 share each in the suit property left by late Sh. Hardev Singh Jhalli and mutation No.830 qua inheritance of late Sh. Hardev Singh Jhalli exclusively in the name of defendant No.1 to the exclusion of

plaintiff and defendants No.2 to 5 qua the suit property was held to be illegal, null and void. Defendant No.1 was restrained from alienating the suit property in any manner. This judgment left defendant No.1 aggrieved and he had challenged the same by way of filing an appeal before District Judge, Ludhiana which was assigned to Addl. District Judge, Ludhiana, notice of which was given to the respondent/plaintiff, who had put in appearance.

5. During the course of proceedings there, defendant No.1 had moved an application under Order 6 Rule 17 CPC seeking amendment in the written statement, so as to plead that late Sh. Hardev Singh Jhalli, father of defendant No.1 and son of plaintiff/respondent No.1 during his life time had executed a Will dated 15.07.1994 bequeathing all his moveable and immovable properties to his son Sukhwinder Singh Jhalli; that Sukhwinder Singh Jhalli had handed over a photocopy of Will to his attorney Darshan Singh, who had given the same to his counsel but while drafting the written statement, specific reference to the Will was not given and now the pleading in that regard is necessary so as to make mention of the Will and to state that Will had been handed over by Sukhwinder Singh Jhalli to his grand mother Smt. Ranjit Kaur-plaintiff for the purpose of getting the mutation entered and sanctioned in favour of Sukhwinder Singh Jhalli and it was she, who had got the needful done, handing over the original Will to Halqa Patwari, who had attached the same with mutation; thus

the plaintiff is estopped from challenging the Will.

6. That application was contested by the plaintiff and vide impugned order, the Court of Addl. District Judge, Ludhiana had dismissed the application, which left the appellant aggrieved and he has challenged that order by way of filing the present revision petition.

7. I have heard learned counsel for the revisionist besides going through the record and I find that there is absolutely no merit in the revision petition. The dispute in this case is with regard to estate of late Sh. Hardev Singh Jhalli. According to the plaintiff, who is mother of the deceased, it is to go by way of natural succession whereas defendant No.1, son of the deceased though claimed that he had inherited estate of his father solely on the basis of legal and valid document, did not give details of such document. Of course testamentary Will is deflection from normal inheritance. Unless some person pleads and proves that a legal and valid document had been executed in his/her favour deflecting from the normal succession the property is to devolve by natural succession. It was for defendant No.1 to set up and prove the Will in his favour so as to justify sanctioning of mutation in his name exclusively but he failed to do so, neither pleading the Will nor proving the same. Therefore, during the course of proceedings before first Appellate Court, he cannot come up with this plea all of a sudden in an attempt to put the clock back so as to have a de novo trial.

8. Learned Addl. District Judge, Ludhiana in the impugned

order has observed that plea set up by the appellant that he had handed over copy of Will to his attorney, who had given the same to their counsel but counsel while drafting the written statement had not made any reference to the Will cannot be believed because if the copy had been there with the counsel, he would have certainly made reference thereof in the written statement, instead of simply referring to a legal and valid document in favour of defendant No.1. Counsel representing appellant/defendant No.1 before the trial Court could not have possibly missed making mention of that Will because it was most crucial document on behalf of defendant No.1. Furthermore, when attorney of appellant/defendant No.1 Darshan Singh had appeared as DW-1 in the trial Court, he did not make any mention of the Will and rather, during his cross-examination had stated that he was not aware if late Sh. Hardev Singh Jhalli had executed any Will or any document in favour of his children, therefore, the entire story of appellant/defendant No.1 having handed over of Will to Darshan Singh attorney falls flat. As such, the factum of Will was very much within knowledge of defendant No.1 but no mention in that regard was made in the written statement. Though, appellant/defendant No.1 had tried to pass on the blame to his earlier counsel but his such attempt cannot succeed in view of the discussion earlier.

9. Learned Addl. District Judge, Ludhiana has also taken note of proviso to Order 6 Rule 17 CPC, which is to the effect that no application for amendment shall be allowed if the trial is commenced,

unless the Court comes to the conclusion that in spite of due diligence, party could not have raised the matter before commencement of trial. Thus, keeping in view the totality of circumstances, the application was dismissed.

10. The impugned order is quite detailed, well reasoned and does not suffer from any illegality or infirmity, which might have called for interference by this Court by exercising revisional jurisdiction. The revision petition is bound to fail and the same stands dismissed.

09.12.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No