

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1339 of 2018

Date of Decision: 21.07.2022

Malkit Singh (Since Deceased) through his LRs

... Petitioner(s)

Versus

Sukhwinder Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kulwant Singh, Advocate
for the petitioner(s).

Mr. G.S.Punia, Senior Advocate
with Mr. Amitoj Singh, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The petitioner herein is the plaintiff in a suit for grant of decree of declaration that he is a joint owner in possession of the land measuring 7 kanals, 11 marlas and 2 Sarsahi on the basis of natural succession. He also claims that the alleged Will dated 06.08.2006 put forth by the defendants is illegal, null and void. The relief of permanent injunction is also sought.

2. The plaintiff is the son of Sh. Hari Singh, whereas, the defendants are the grandsons of Sh.Hari Singh. The dispute is with regard to the succession of the property of late Sh.Surjit Singh son of Sh.Hari Singh.

3. When the case was at the stage of rebuttal evidence, the plaintiff prayed for permission to examine the Handwriting and Fingerprint Expert to prove that late Sh.Surjit Singh did not thumb marked both the

Will put forth by the defendants. The trial Court dismissed the application

on the ground that the evidence sought to be led is affirmative in nature, which the plaintiff should have led while leading his affirmative evidence.

4. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book.

5. It is well settled that the propounder of the testamentary disposition is required to prove the Will. The defendants claim that late Sh.Surjit Singh had executed two Wills. The Will dated 26.07.2000 is stated to have been executed in favour of Sh.Nachhattar Singh (the defendants' father) and the Will dated 06.08.2006 has been allegedly executed in favour of the defendants.

6. Undoubtedly, the learned trial Court has failed to cull out the proper issues. In fact, there should have been distinct issue on each Will and onus thereof should be on the propounder (the defendants) of the respective Wills. However, this error should not refrain the Court from proceeding with the matter, in the interest of justice.

7. The plaintiff has a right to lead evidence in rebuttal, once the onus to prove the Wills is on its respective propounder. Consequently, the present revision petition is allowed. The order, under challenge, is set aside. The learned trial Court is directed to permit the plaintiff to examine the Handwriting and Fingerprint Expert.

(Anil Kshetarpal)
Judge

July 21, 2022
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No