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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CR-7935-2018**

Date of Decision: November 24, 2022

Karamjit Singh and ors Petitioners
Versus
Jagmail Singh and another Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.V.K. Shukla, Advocate for the petitioners.
Mr. Akhil Kashyap, Advocate for the respondents.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition challenge has been made to an order dated 23.10.2018 (P-1) passed by the Court of Additional Civil Judge (Sr. Division), Moga; whereby prayer made on behalf of petitioners/ defendants (hereinafter referred to as 'the petitioners') for seeking permission to lead secondary evidence in order to prove registered Will dated 29.12.1988, purportedly executed in their favour, has been declined.

Facts leading to the present case revision petition that the respondents/ plaintiffs (hereinafter referred to as 'the respondents') filed a suit for declaration claiming the estate left by deceased Babu Singh, based on a Will dated 24.01.1989.

Upon notice, petitioners appeared and set up a registered Will dated 29.12.1988 executed by Babu Singh in their favour. During trial, the petitioners moved an application under Section 65 of the Indian Evidence Act, 1872, seeking permission to prove the Will dated 29.12.1988 by way of secondary evidence. The said application was contested by the respondents by way of filing their objections to it.

Vide impugned order dated 23.10.2018, the trial Court declined the prayer made by the petitioners and it is the said order which has been impugned in the present revision petition.

Learned counsel for the petitioners contends that in view of the facts and circumstances of this case, the only controversy to be determined by the Court below is the question of validity of two Wills dated 24.01.1989 and 29.12.1988, as set up by both the parties and as such, the production & proof of Will as set up by the petitioners is very necessary so as to make good their case.

On the other hand, learned counsel for the respondents submits that Will dated 29.12.1988 was earlier produced by the predecessor-in-interest of petitioners in civil suit titled as **Mewa Singh Vs. Shamsher Singh**, as Ex.D1 wherein the same was sent for forensic examination and a report came to the effect that the signatures of Bhup Singh on the Will dated 29.12.1988 do not tally with his standard signatures. He further submits that once the document itself is doubtful, the prayer has been rightly declined. Learned counsel also submits that filing of the application is only a delaying tactic.

I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioners.

Once the parties to the litigation who are contesting for the estate of deceased Bhup Singh have based their claims on two separate Wills and the entire adjudication has to be made thereupon, it would be highly unjustified in case the petitioners are not permitted to

at least take their chance so as to prove their Will dated 29.12.1988 as set up by them in their defence.

I have even gone through the reasoning recorded by the trial Court which is primarily the argument raised at the instance of respondents here in this very revision petition, that there was a report made by forensic laboratory, creating doubt about the signatures of Bhup Singh on the Will dated 29.12.1988, as such the same could not be permitted to be proved by way of secondary evidence. In this regard, it may be clarified here that as a matter of fact though the Will dated 29.12.1988 was produced in the previous suit titled as Mewa Singh Vs. Shamsher Singh as Ex.D1, the same was sent for forensic examination and even report from the finger print expert came thereupon creating doubt about the authenticity of signatures of Bhup Singh, however, still there being no final adjudication made thereupon by the Court in the said suit, the same having been withdrawn before its final adjudication, the trial Court in the present case, in my view, committed an error of law by recording that the Will dated 29.12.1988 is doubtful. Unless the parties to the present suit are granted an opportunity to lead evidence and to prove the existence, loss and execution of the Will in question, no such finding even prima facie could have been recorded by the trial Court.

Thus, in the facts and circumstances of the present case; rather than adopting a hyper-technical approach, a pragmatic approach was required to be adopted by the trial Court. In my view, passing of the impugned order has deprived the petitioners of their

right to defend their case effectively and to prove the stand taken by them in their written statement, thereby causing substantial justice.

In view of the above, the present revision petition is allowed. Impugned order dated 23.10.2018 (P-1) is ordered to be set aside and prayer made by the petitioners seeking permission to prove Will dated 29.12.1988 by way of secondary evidence is allowed.

November 24, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>