

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

CR-738-2021 (O&M)

Date of Decision: August 30, 2022

Ramesh Kumar @ Babbu

...Petitioner

VERSUS

Santosh Kumari and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Bhardwaj, Legal Aid counsel
for the petitioner.

Petitioner-in-person.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 21.01.2020 (Annexure P-3) passed by learned Civil Judge (Jr. Divn.), whereby, an application for production of documents, filed by the petitioner, has been dismissed.

Background facts, in nutshell, are as follows:-

That, initially, civil suit bearing No.226 dated 21.07.2014, CS-672-2014, titled 'Santosh Kumari and others vs. Om Parkash and others' was filed. This is suit filed for seeking possession of shop including staircase, as detailed therein, on the basis of the title. The respondents-plaintiffs have put forth the Will of their father Ganga Bishan, allegedly executed on 29.06.1988, qua the shop in dispute, in favour of his five daughters i.e. plaintiffs No.1 to 4 and respondent No.5-Krishna Kumari.

Present petitioner-defendant No.2 had made appearance before the lower Court. Even, other defendants had also made appearance. The written statement was filed by the present petitioner-defendant No.2 and by other persons, who were impleaded as defendants No.3 and 4. Therein, the disputed shop and residential property has been asserted to be ancestral, which was purchased by Lala Bal Mukand, father of Ganga Bishan and on this ground, it was further asserted that Ganga Bishan had no right to exclude the share of his son Krishan Lal from the Will dated 29.06.1988, which was relied upon by the respondents-plaintiffs.

When the case was at the stage of defendant evidence, an application dated 18.09.2019, copy whereof, is at page No.18 of the paperbook, had been filed, whereby, the present petitioner had asserted that respondents-plaintiffs have not filed any record relating to the ownership of the property mentioned in the Will dated 29.06.1988, executed by Ganga Bishan and thus, he had prayed that respondents-plaintiffs be ordered to produce on record, relating to the ownership of the property, as mentioned in the aforesaid Will.

In reply, respondents-plaintiffs had resisted the claim of the petitioner. Specific legal objection had been taken that the said application is misconceived and malafide one. The same had been filed just to delay the proceedings of the case.

After hearing learned counsel for the parties on the said application, vide impugned order dated 21.01.2020, the same was dismissed.

Feeling aggrieved, the petitioner has filed the present revision

At the very outset, it is pertinent to mention that the said application had been filed at a very late stage, when the case was fixed for defendant evidence. Perusal of the plaint, which has been placed on record, reveals that four daughters of Ganga Bishan had filed a suit for possession of shop, as detailed in the headnote of the plaint, on the basis of the title. They are asserting their right to the property in question, on the basis of the Will dated 29.06.1988, allegedly executed by Ganga Bishan in favour of his five daughters, i.e. four daughters, who are plaintiffs and Krishna Kumar-defendant No.5, before the lower Court.

The written statement filed by the petitioner, who is defendant No.2 before the lower Court, asserts about the disputed shop to be ancestral, which was purchased by his grandfather. After completion of the pleadings, following issues were framed:-

1. *Whether Ganga Bishan had revoked/cancelled his earlier will dated 15.7.1985 vide cancellation/revocation deed dated 29.6.1988? OPP*
2. *Whether Ganga Bishan executed a valid registered will registered at serial no.129 on 29.6.1988 as alleged? OPP*
3. *Whether plaintiffs are entitled to get possession of the suit property? OPP*
4. *Whether the plaintiffs have got no locus standi and cause of action to file the present suit? OPD*
5. *Whether defendant no.1 became owner of the suit property on the basis of document of family settlement dated 15.8.2000? OPD*
6. *Whether defendant no.1 was given possession of the suit property on 15.7.2000? OPD*
7. *Whether Santosh Kumari plaintiff executed an agreement in favour of defendant no.1 on 28.2.2007, if so its effect? OPD*

Even, the evidence of the plaintiffs has been recorded and completed. It was only at the stage, when the case was fixed for defendant

evidence that the aforesaid application had been filed. The witnesses of the plaintiffs were cross-examined by the petitioner, at length. If, there was any requirement of production of the documents qua the ownership of Ganga Bishan, it was required on the part of the petitioner to have filed such application, at appropriate stage. Moreover, it has been rightly observed by the lower Court that issues have been framed, vis-a-vis, the said Will and also about the entitlement of the plaintiffs, to get possession of the suit property and onus to prove this issue is upon the respondents-plaintiffs and therefore, it is required on their part to establish their claim, on the basis of the Will and for deciding the same, evidence with regard to the ownership and nature of property, is bound to come on record and that shall be appraised by the lower Court, at appropriate stage.

Precisely on this account, learned lower Court has rightly dismissed the application for production of the documents. Hence, the present revision petition sans merit and the same is hereby dismissed.

August 30, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No