

121

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

CR-1944-2022 (O&M)

Reserved on : 19.07.2022

Date of decision : 27.07.2022

Kapil Bhambri

.....Petitioner

Versus

Hitesh @ Radha Sehgal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed impugning the order dated 18.04.2022 whereby the application for re-framing of an additional issue moved by the plaintiff-respondent No.1 has been accepted.

Learned counsel for the defendant No.1-petitioner would contend that vide order dated 02.12.2021 additional Issue No.2A was framed as under :

“2-A. Whether the Will dated 24.6.2003, allegedly executed by Bal Krishan, in favour of defendants No.1 to 3 (Kapil Bhambri (son), Lalit Bhambri (son) and Yogesh Kakkar (daughter) is wrong, illegal, null and void as well as fabricated and the same is an act of fraud and

forgery, which has not been executed by Bal Krishan, as alleged ? OPP”

The onus of the additional issue framed was on the plaintiff-respondent No.1. Thereafter the plaintiff-respondent No.1 moved an application dated 17.01.2022 for re-framing the additional issue framed. The said application was contested by the defendants and now vide the impugned order dated 18.04.2022 the Issue No.2-A has been re-framed as under :

“2-A. Whether the Will dated 24.6.2003 executed by Bal Krishan, in favour of defendants no.1 to 3 (Kapil Bhambri (son), Lalit Bhambri (son) and Yogesh Kakkar (daughter) is correct, legal, valid and genuine ? OPD no.1 to 3”

According to learned counsel, the onus to prove the Will has been shifted on the defendant Nos.1 to 3 including the defendant-petitioner. It is further the contention that the allowing of the application dated 17.01.2022 would amount to reviewing the order dated 02.12.2021 which is not permissible in law as the Court had no power to review its own order.

Heard.

In the present case the suit was filed on 25.04.2017 and written statement was filed on 21.07.2017. In the written statement filed by defendant Nos.1 to 3, a Will dated 24.06.2003 executed by Bal Krishan in their favour was propounded. In the replication filed by the plaintiff-respondent No.1 it was denied that Bal Krishan had executed a Will dated 24.06.2003. The issues as framed on 27.10.2017 did not have an issue qua the validity of the Will. The plaintiff-respondent No.1 filed an application dated 06.02.2020 for framing of an additional issue qua the validity of the

said Will. Reply was filed to the said application and vide order dated 21.12.2021 Issue No.2-A, as reproduced above, was framed putting the onus on the plaintiff-respondent No.1 to prove in the negative that the Will was forged and fabricated. Thereafter, an application dated 17.01.2022 was filed by the plaintiff-respondent No.1 for reframing of Issue No.2A. The said application was contested and vide the impugned order dated 18.04.2022 (Annexure P-9), the Trial Court noticed that as per the law laid down, the onus to prove the factum of the Will is on the propounder. The Issue No.2-A was, hence, reframed as reproduced above.

The argument raised by learned counsel for the defendant-petitioner that the onus has wrongly been cast upon him deserves to be rejected on the ground that the onus of proving the factum of a Will is always on the propounder. The Will was propounded by the defendant Nos.1 to 3 in their written statement. The existence of the Will was denied in the replication and, hence, the onus to prove the Will would lie on the propounder i.e. the defendant Nos.1 to 3 which includes the defendant-petitioner. The re-framed Issue No.2-A rightly puts the onus on the defendant Nos.1 to 3 to prove the factum of the Will. The argument of learned counsel for the defendant-petitioner that the impugned order amounts to reviewing the earlier order dated 02.12.2021 also deserves to be rejected inasmuch as the earlier order dated 02.12.2021 was passed on an application for framing an additional issue. The present order has been passed on an application for reframing of the said issue. The same would not tantamount to review of the order dated 02.12.2021.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The present revision petition

is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

27.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO