

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

CR-4599-2019 (O&M)

Date of decision: 18.08.2022

Baljinder Singh

...Petitioner

Versus

Mukhtiar Kaur and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Rau P.S.Girwar, Advocate for the petitioner

Mr. P.K.S.Phoolka, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

A small dispute has come up for adjudication. In a pending suit, a distinct issue on the validity of the Will executed by Sh. Joginder Singh (deceased) was framed on 06.10.2017. The petitioners herein are defendants. The plaintiff has filed a suit for grant of decree of declaration that the plaintiff being natural heir is entitled to the property of late Sh.Joginder Singh.

The attesting witnesses of the Will have already been examined. The defendants have already availed 14 opportunities and thereafter, closed the evidence on 07.12.2017. The defendants at that stage filed an application for direction to the Deputy Commissioner of the District to produce the original Will, which is lying in the office of Sadar Kanungo, Deputy Commissioner, Bathinda to produce the original Will, which is lying in his office. The trial court has dismissed the same.

Heard learned counsel representing the parties at length and with their able assistance perused the paperbook.

On the one hand, learned counsel representing the petitioner contends that in the absence of original Will, the case of the petitioners

will suffer prejudice, whereas on the other hand, he states that he does not need any further opportunity to lead evidence as the attesting witnesses of the Will have already been examined. He submits that Sadar Kanungo should be directed to produce the original Will in the court. Learned counsel representing the respondent submits that it would result in de novo trial.

The Will is a solemn document. It is required to be examined by the court while deciding the suit. When the Will is in the custody of an official, the same can always be permitted to be brought before the civil court.

The rules of procedure are hand-maid for advancing the cause of justice. The trial court should have risen to the occasion and directed the Sadar Kanungo to produce the Will, particularly when the defendants (the propounder of the Will) does not wish to lead any further evidence. Hence, the order under challenge is set aside. The trial court is requested to direct the Sadar Kanungo to produce the evidence, subject to payment of Rs.5,000/- as costs and thereafter, proceed to decide the suit positively within a period of three months.

The revision petition stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

18.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE