

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3273 of 2021 (O&M)

Date of Decision: 22.09.2022

Damanpreet Singh and Another

... Petitioner(s)

Versus

Jaspal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner(s).

Mr. G.S.Verma, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The dispute, in the present case, is with regard to the correctness and genuineness of the alleged Will dated 24.12.2013 executed by late Sh. Kartar Singh.

2. The petitioners herein are the defendant No.1 and 3. The plaintiff (late Sh. Kartar Singh's son) has filed a suit for grant of decree of declaration to the effect that the Will dated 24.12.2013, allegedly executed by late Sh. Kartar Singh in favour of defendant No.1-Sh. Damanpreet Singh in respect of the property bearing plot No. 39 measuring 133.33 square yards, is forged and fabricated as well as null and void. The defendant No.1, while contesting the suit, propounded the aforesaid Will executed in his favour. On appreciation of the pleadings, the trial Court has culled out the following issues:-

1. *Whether the Will bearing Wasika No. 805 dated 24.12.2013 executed by Kartar Singh in favour of defendant no. 1 Damanpreet Singh regarding property as detailed in head note of the plaint is valid? OPD (defendants no. 1 to 3)*
2. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
3. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
4. *Whether the plaintiff is entitled for separate possession as prayed for? OPP*
5. *Whether the suit of the plaintiff is not maintainable? OPD*
6. *Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from this court? OPD*
7. *Whether the plaintiff has no cause of action to file the present suit? OPD*
8. *Whether the present suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
9. *Relief.”*

3. The trial Court has considered it appropriate to call upon the defendants to lead their evidence. The aforesaid direction is the subject matter of challenge in the present revision petition.

4. The learned counsel representing the petitioners (defendant

No.1 and 3 in the suit) while drawing the attention of the Court to Order XVIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) submits that the plaintiff, at the first instance, is required to lead evidence to prove his case. On the other hand, the learned counsel for the respondent No.1 submits that in the facts of the case, at the first instance, the propounder of the Will is required to prove the case.

5. It is well settled that the propounder of the testamentary disposition is required not only to prove the Will, but also required to furnish explanation in respect of all the surrounding suspicious circumstances. The onus is on the propounder to prove that the Will was executed in accordance with the provisions of the Indian Succession Act, 1925 and also to prove the Will in accordance with Section 68, 69 and 71 of the Indian Evidence Act, 1872.

6. Moreover, the onus to prove a particular fact lies upon the party who affirms such fact and wishes the Court to believe in its existence and not upon the party who denies such fact. On a careful perusal of the issues, it is evident that the primary onus to prove the Will is on the defendant No.1 to 3. The remaining issues are only formal in nature. In fact, the remaining issues are based either upon the prayer made in the suit or the preliminary objections taken by the defendants while filing their respective written statements.

7. In such circumstances, Order XVIII Rule 1 CPC do envisage an exception to the general rule of the plaintiff’s right to begin the evidence. However, the learned counsel representing the petitioners submits that the defendants may suffer a serious prejudice as they will not get an opportunity

to lead rebuttal evidence. There is some substance in the arguments

advanced by the learned counsel representing the petitioners.

8. It is well settled that the rules of procedure are the handmaids of justice. In the present case, the trial Court is just and proper in calling upon defendant No.1 to prove the Will, at the first instance.

9. Keeping in view the aforesaid facts, the present revision petition is disposed of with the observation that if the defendant No.1 to 3 prove before the trial Court that they are required to be given an opportunity to lead rebuttal evidence, then the trial Court shall consider the same and grant such opportunity, if found necessary.

10. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

September 22, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No