

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8488 of 2018

Date of Decision: 28.09.2022

Amrik Singh alias Gurmit Singh Bajwa and Another

... Petitioner(s)

Versus

Harjinder Kaur alias Mohinder Kaur and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Bhriagu Dutt Sharma, Advocate
for the petitioner(s).

Ms. Roja Agnihotri, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. An interlocutory order, passed by the trial Court while permitting the plaintiff to examine the Handwriting and Fingerprint Expert to compare the signatures of late Sh.Ajit Singh Bajwa on the Will dated 21.12.1998 with the signatures of the testator on his driving license, has been assailed in the present revision petition filed under Article 227 of the Constitution of India.

2. The dispute is with regard to inheritance of the property left behind by late Sh.Ajit Singh Bajwa. Smt.Harjinder Kaur alias Mohinder Kaur, widow of late Sh.Ajit Singh Bajwa, has filed a suit claiming inheritance on the basis of the Will dated 21.04.2011 executed in her favour, whereas, the defendants are two sons and a daughter of late Sh.Ajit Singh Bajwa. They have contested the suit claiming that late Sh.Ajit Singh had bequeathed the property in favour of his two sons vide the alleged Will dated 21.12.1998. Unfortunately, the trial Court did not frame a distinct and specific issue with regard to the Will dated 21.12.1998 propounded by the defendants. However, the defendants led their evidence to prove the alleged

Will. When the case was at the stage of rebuttal evidence, the plaintiff's application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), to permit her to examine the Handwriting and Fingerprint Expert, in order to seek his opinion with regard to the genuineness of the signatures of late Sh.Ajit Singh Bajwa, has been allowed.

3. The learned counsel representing the petitioners contends that the Will dated 21.12.1998 was neither challenged by the plaintiff nor any issue has been framed in this regard. He submits that at the stage of rebuttal evidence, an application under Section 151 CPC could not have been entertained by the trial Court.

4. It is well settled that the propounder is required to prove the testamentary disposition by leading evidence. The defendants have already led their evidence. Even in the absence of a distinct issue, the parties, being conscious of their case, have already led their evidence accordingly. Once the onus was on the defendants to prove the Will dated 21.12.1998, the plaintiff will have to be given an opportunity to rebut the evidence. Hence, non-framing of a distinct issue does not affect the substantive rights of the parties.

5. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

September 28, 2022
"DK"

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No