

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 3288/2018

Date of decision:23/03/2023

Yudhveer and another

.....Petitioners.

Vs.

Puneet Kumar

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. S.K.Yadav, Advocate for the petitioners.

Mr. Ajay Ghanghas, Advocate for the respondent

Nidhi Gupta, J.

Present revision petition has been filed by the plaintiffs seeking setting aside of the order dated 15.2.2018 (Annexure P-5) whereby the application filed by them under Order 7 Rule 14 read with Sections 94 and 151 of Civil Procedure Code (hereinafter referred to as 'CPC') for directing the respondent/defendant to bring the original Will dated 5.1.2001, has been dismissed by the Id. Additional Civil Judge (Senior Division), Gurugram.

It is submitted by the Id. Counsel for the petitioners that petitioners are claiming ownership over the suit property by way of inheritance whereas the respondent/defendant is claiming inheritance over the suit property by way of alleged Will dated 5.1.2001. It is submitted that accordingly, the petitioners had filed the present Civil suit for declaration with the prayer that the alleged Will dated 5.1.2001 as presented by the respondent/ defendant is null and void being a result of forgery and fabrication, and the same is thus, not binding on the petitioners/ plaintiffs.

However, as the said Will dated 5.1.2001 is in the possession of the respondent, the petitioners had filed the present application (Annexure P-4) under Order 7 Rule 14 read with Sections 94 and 151 CPC, for directing the respondent to place on record the original Will dated 5.1.2001. It is submitted that it is imperative that the respondent be directed to bring on record the original will dated 5.1.2001 to enable the petitioners to compare alleged handwriting of the testator on the said Will with the admitted signatures/thumb impression of the alleged testator. Further submitted that the petitioners filed present application on 15.2.2018, however, the Id. Trial Court dismissed the said application vide impugned order on the same day itself.

In response, learned counsel for the respondent/defendant states that the plaintiffs had closed their evidence in 2015 and the present application was filed in the year 2018. Ld. Counsel further submits that a perusal of the said application (Annexure P-4) shows that the petitioners have merely sought the placing on record of the original Will dated 5.1.2001 and have nowhere prayed for the said original Will to be examined by a Handwriting Expert. It is submitted that the respondent/ defendant will produce the Will in question at the time of his evidence. It is further submitted that the Will in question is a public document being a registered Will and therefore, the present application has been filed merely to delay the proceedings and there is no error in the impugned order and present revision petition deserves to be dismissed.

In rebuttal, it is submitted by the Id. Counsel for the petitioners that admittedly the Will in question is a public document and copy thereof can be obtained from the office of Sub Registrar, however, the

office of Sub Registrar cannot place on file the original register before the trial Court and forgery can be proved only from the original document. It is reiterated that accordingly respondents be directed to produce the original Will dated 5.1.2001.

No other argument has been raised on behalf of the parties.

Heard Id. Counsel.

Perusal of the record of the case reveals that the petitioners had filed the instant suit for declaration to the effect that they are owners in possession over the suit property, and registered Will No.488 dated 5.1.2001 is null and void being a result of forgery and fabrication. The said suit was filed on 6.9.2014 to which respondent filed written statement on 20.1.2015. Subsequently, the Petitioners filed an application under Order 6 Rule 17 CPC for amendment of the plaint, which was allowed vide order dated 18.4.2017, and to which the respondent duly filed amended plaint.

Perusal of the present application under Order 7 Rule 14 read with Section 94 and 151 CPC filed by the petitioners for directing the respondent/defendant to bring on record the original Will dated 5.1.2001 shows that prayer in the said application is that *“it is therefore, prayed that the defendant may kindly be directed to bring original Will dated 5.1.2001 and place it on Court file in the interest of justice”*. It has categorically been stated by the Id. Counsel for the respondent that respondent will produce original Will at the time of his evidence. Ld. Counsel for the petitioners is unable to deny that he can lead evidence in rebuttal thereto, if so reserved. Moreover, the Will in question is a registered document and no direction is required for placing the same on record. As regards the contention of the Id.

Counsel for the petitioners that for proving the handwriting of testator it is necessary to produce the original Will, perusal of the application under Order 6 Rule 17 CPC shows that no such prayer is made therein. As noticed above, the only prayer in the application is that “*the defendant may kindly be directed to bring original Will dated 5.1.2001 and place it on Court file in the interest of justice*”.

Accordingly, finding no merit in this revision petition the same is hereby, dismissed.

23/03/2023	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No