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

CR-523-2023 (O&M)

Date of decision : 08.02.2023

Niranjan Kaur (since deceased) through LRs and others ... Petitioners

Versus

Rano @ Rani Saini and others .. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Nitish Garg, Advocate for the petitioners.

Mr. Aditya Dassaur, Advocate for respondent No.1.

Anupinder Singh Grewal, J. (Oral)

The petitioners have challenged the order dated 07.01.2023 (Annexure P-6) whereby their application for leading additional evidence and to examine Kapoor Singh, the scribe of the Will, has been dismissed.

Learned counsel for the petitioners submits that respondent No.1/plaintiff had filed a suit for declaration to the effect that she is co-owner in possession of the suit property to the extent of 1/6th share and challenged the Will executed by Karnail Singh in favour of his wife-Niranjan Kaur on 16.10.1980. He further submits that there is no surviving witness of the Will and the petitioners/defendants are now seeking an opportunity to examine the scribe, namely, Kapoor Singh, who could not be examined earlier as he was residing abroad and suffering from various ailments. In support of his submissions, he has relied upon the judgments of this Court in the cases of **Harminster Singh and another versus Harjinder Singh and others, 2021(2)**

PLR 617, Manmohan Singh versus Davinder Kaur @ Mohinder Kaur @

Gurminder Kaur and others, 2015(5) RCR (Civil) 661, Daljit Kaur and others versus Gurdeep Singh, 2016(2) PLR 609, Jagdeep Singh versus Labh Singh and others, 2012(41) RCR (Civil) 851, Pawan Kumar versus Raj Kumar and others, 2007(1) RCR (Civil) 385 and Ram Singh (Minor) versus Pirthi and others, 1996(3) RCR (Civil) 619.

Learned counsel for respondent No.1/plaintiff submits that the application for leading additional evidence has been preferred by the petitioners/defendants after the entire evidence has been led and, therefore, it has rightly been declined by the trial Court. The petitioners had adequate opportunities to examine this witness earlier especially when their application for leading additional evidence had been allowed several years back but they did not examine this witness earlier and are trying to do so at the fag end of the trial. He also submits that in the event of this application being allowed, it will help the petitioners/defendants to fill up the lacuna in the evidence which is impermissible. In support of his submissions, he has relied upon the judgments of the Supreme Court in the case of **K.K. Velusamy versus N. Palanisamy**, passed in Civil Appeal Nos.2795-96 of 2011, decided on 30.03.2011 and the judgments of this Court in the cases of **V.K. Mantro and Son (HUF) and others versus M/s Select Global Hotel Pvt. Ltd. and others**, passed in Civil Revision No.2041 of 2018, decided on 29.03.2019, **Satnam Singh versus Devinder Kaur**, passed in Civil Revision No.629 of 2006, decided on 24.08.2006 and **Sachin versus Sunita Vashisht and others**, passed in Civil Revision No.1483 of 2004, decided on 04.02.2005.

Heard.

Respondent No.1/plaintiff had filed a suit for declaration to the

effect that she is co-owner in possession to the extent of 1/6th share in the estate of deceased Karnail Singh and challenged the Will executed by Karnail Singh in favour of his wife-Niranjan Kaur on 16.10.1980. Respondent No.1/plaintiff is the daughter of Karnail Singh and Niranjan Kaur while defendants No.2 to 4 are their sons and defendant No.5 is their daughter. It is manifest that no witness to the Will had been examined. The scribe, namely, Kapoor Singh, who is stated to have been residing abroad, is about 75 years of age and suffering from various ailments. His examination would have a bearing on the adjudication of the matter, especially when the Will is in question. It is true that the petitioners/defendants should be diligent and ought to have examined this witness earlier, especially when they had the opportunity to do so. Mere delay in examination of the witness whose testimony would otherwise be vital for adjudication of the matter should not be a hurdle towards such examination. For this delay in preferring an application for leading additional evidence, respondent No.1/plaintiff could be suitably compensated with cost. The rules of procedure are meant to aid and advance the object of justice and not to thwart it.

The judgments cited by learned counsel for the respondent would not advance his case. In the case of **K.K. Velusamy versus N. Palanisamy (supra)**, the Supreme Court while allowing the application for further cross-examination of the plaintiff (PW1) and attesting witness (PW2) which had been filed after evidence had been led and the matter was being argued before the trial Court had held that inherent powers under Section 151 CPC would not affect express powers conferred under Order 18 Rule 17 CPC and can be invoked to achieve the ends of justice. It was further held that the Courts, while

allowing the evidence sought to be produced, should consider as to whether the evidence would assist in clarifying the evidence led on the issues or lead to a just and effective adjudication.

In the case of **V.K. Mantro and others versus M/s Select Global Hotel Pvt. Ltd. and others (supra)**, which pertains to a suit for permanent injunction and recovery, an application had been filed to adduce additional evidence of 30 documents at the stage of pronouncement of judgment and in the case of **Satnam Singh versus Devinder Kaur (supra)**, which pertains to a suit for damages, an application for cross-examination of the witnesses had been filed. This Court in both the cases had held that the trial Court had not opined while allowing the application as to how the evidence was relevant, which is the essence of Order 18 Rule 17 CPC.

In the case of **Sachin versus Smt. Sunita Vashisht and others (supra)**, in a suit for damages, an application had been filed for examining the plaintiff as a witness as he attained majority although his father through whom he had filed the suit had been examined, it was held that the application is not *bona fide* as the plaintiff was over 17 years of age when the suit was filed and, therefore, the plea of minority raised after lapse of considerable time is frivolous.

Consequently, the petition is allowed and the impugned order dated 07.01.2023 (Annexure P-6) is set aside. The petitioners/defendants would be afforded an effective opportunity to examine Kapoor Singh, who is stated to be the scribe of the Will, subject to payment of cost of Rs.15,000/- which would be paid to respondent No.1/plaintiff. Respondent No.1/plaintiff would also be granted adequate opportunity to rebut the evidence led by the

petitioners/defendants.

At this stage, learned counsel for respondent No.1/plaintiff submits that as the suit is pending for quite some time, the trial Court be directed to conclude the trial expeditiously.

The trial Court is directed to conclude the trial expeditiously.

Pending application(s), if any, shall also stand disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

February 08, 2023

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No