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

CR-780-2017

Date of Decision:- 24.08.2023

GURMAIL SINGH

....Petitioner

Vs.

SUKHVIR SINGH & ORS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Gulzar Mohd. Advocate for the petitioner.
Mr. Ashwani Talwar, Advocate for the respondents No.1 to 3.

AMARJOT BHATTI, J. (Oral)

1. The petitioner Gurmail Singh has filed present petition for setting aside the impugned order dated 30.11.2016 (Annexure P-7) passed by Civil Judge (Jr. Divn.), Jalandhar in case No.253 of 2013 titled as Gurmail Singh Vs. Sukhviri and others, whereby the application under Order 14 Rule 5 for framing additional issue regarding Will dated 09.06.1976 filed by the petitioner/plaintiff has been dismissed.

2. Learned counsel for the petitioner argued that Gurmail Singh plaintiff filed suit for declaration regarding joint ownership and possession of the land along with suit for a decree for permanent injunction against the defendants. In the said plaint, he took specific stand that Piara Singh died in September, 1977 and during his life time in sound disposing mind, bequeathed his property vide Will dated 09.06.1976 which was registered

on 11.06.1976 before Joint Sub Registrar, Jalandhar in favour of his five sons. Regarding the aforesaid Will, no issue was framed by learned Civil Judge. The issues were framed vide order dated 18.01.2014 (Annexure P-3). When this fact came to the notice of the petitioner, he filed application under Order 14 Rule 5 CPC for framing of additional issue. The application was contested by the defendant Nos.1 to 3. The application is Annexure P-5 and its reply is Annexure P-6. However, the said application was declined by the then Civil Judge (Jr. Divn) vide order dated 30.11.2016 which is Annexure P-7. It is argued that in the later portion of the impugned order it was mentioned that issue No.1 was framed regarding the aforesaid registered Will dated 09.06.1976. In-fact no issue was framed pertaining to the aforesaid Will and it was observed by the learned Civil Judge (Jr. Divn.) Jalandhar that the issue regarding Will is covered by issue No.1. It is prayed that specific issue is required to be framed regarding the Will in question for proper adjudication of the case. Therefore, the impugned order dated 30.11.2016 (Annexure P-7) may kindly be set aside and specific additional issue may be framed regarding the aforesaid Will.

3. The Civil Revision is opposed by learned counsel for the respondents/defendant Nos.1 to 3 taking the stand that this application for framing of additional issue was filed when both the parties had already concluded their evidence. Now by framing this issue, the trial in this case cannot be started afresh. There is issue No.1 whether the plaintiff is entitled for declaration and permanent injunction as prayed for and the claim of petitioner/plaintiff regarding existence of Will dated 09.06.1976

registered on 11.06.1976 will be covered by issue No.1. Therefore, the Civil Revision is without merits and the same may be dismissed.

4. I have considered the arguments advanced before me. I have gone through the record carefully. Gurmail Singh the present petitioner filed suit for declaration along with suit for permanent injunction taking specific stand in para Nos.5 and 6 of the plaint that Piara Singh during his life time executed Will dated 09.06.1976 which was registered on 11.06.1976 before Joint Sub Registrar, Jalandhar in favour of his five sons. The case of present petitioner is based on the aforesaid Will of Piara Singh who died in September, 1977. The aforesaid suit is contested by the defendant Nos.1 to 3 by filing written statement which is Annexure P-2. Perusal of this written statement shows that the contents of para Nos.5 and 6 are denied for want of knowledge. However, death of Piara Singh is admitted except the year of death. Therefore, it is the case of petitioner/plaintiff regarding the execution and registration of aforesaid Will by Piara Singh. On the basis of the pleadings of the parties, the then learned Civil Judge (Jr. Divn.), Jalandhar was required to frame specific issue on the aforesaid Will. In-case specific issue was not framed and it came to the notice of the trial Court later on, even then the Court should have framed issue suo moto. In the case in hand, the present petitioner filed application for framing of additional issue which is Annexure P-5 and reply to this application is Annexure P-6. Thereafter the application was declined by passing impugned order dated 30.11.2016 (Annexure P-7). In view of the aforesaid facts and circumstances of the case, the impugned order dated 30.11.2016 is not justified. The trial Court is required to frame additional issue regarding the aforesaid Will of Piara Singh dated

09.06.1976 registered on 11.06.1976 so that at the time of final disposal of the case, specific finding is given by the Court pertaining to the aforesaid Will.

5. Resultantly, the revision preferred by the petitioner is accordingly allowed. The impugned order dated 30.11.2016 is set aside with further direction to the concerned Civil Judge (Jr. Divn.) for framing specific additional issue regarding the aforesaid Will and the plaintiff be given reasonable opportunity to lead evidence on the said issue as well as reasonable opportunity to the other party to rebut the same. Considering the fact that the case is pending since long the trial Court is directed to expedite the proceedings.

6. The revision is accordingly disposed of.

Pending applications, if any, shall also stand disposed of.

24.08.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No