

262 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 8560 of 2017(O&M)

Date of Decision: 08.08.2023

Mastan Singh

...Petitioner

Versus

Balwinder Kaur & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Himanshu Puri, Advocate
For the petitioner.

Mr. S.S. Sandhu, Advocate for
Mr. S.S. Swaich, Advocate
For respondents No.1 to 3.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ defendant No.3 for setting aside the order dated 07.10.2017 (Annexure P-7) passed by the Court of Civil Judge (Jr.Divn.), Amloh, whereby the application filed by the petitioner for leading additional evidence to examine three witnesses in order to prove will dated 07.01.1987 executed by his father Inderjit Singh, has been dismissed.

2. I have heard the counsel for the parties.

3. The counsel appearing on behalf of the petitioner submits that the petitioner has propounded will dated 07.01.1987 in his written statement. That, however, due to inadvertence no issue was framed by the learned trial Court with regard to said will despite the fact that its execution has been denied by respondents No.1 to 3, who are also daughters of Inderjit Singh.

That subsequently, at the final stage, when the parties concluded their evidence, it came to the notice of the trial Court that no specific issue with regard to execution of will in question has been framed and consequently the learned trial Court framed issue with regard to execution of aforesaid will and the onus of the said issue was placed on the petitioner. But due to inadvertence at the time of framing of said additional issue the counsel for the petitioner made statement that he does not want to lead any fresh evidence to prove the said issue and consequently the case was fixed for final arguments. That, however, in the meantime petitioner filed an application to lead additional evidence to prove the execution of aforesaid will. The counsel for the petitioner further submits that the trial Court is having no right to dismiss the said application simply on the ground that the counsel for the petitioner has already made statement not to lead any fresh evidence with regard to additional issue. The counsel for the petitioner made it clear that now he only wants to examine deed writer who scribed the will in question by way of additional evidence. So, prayer is made that one opportunity be granted to the petitioner to lead additional evidence by examining the deed writer of will in question.

4. The present petition is resisted by the counsel for respondents No.1 to 3 who while supporting the impugned order submits that the petitioner was fully aware about the will in question from the very beginning and accordingly he lead evidence. That, however, due to inadvertence issue regarding execution of will in question was not framed and the same was framed by the learned trial Court vide order dated 09.03.2016 and the onus of said additional issue was put on the petitioner and on the same day the counsel for the petitioner got recorded his statement to the effect that no

fresh evidence needs to be recorded with regard to additional evidence. The counsel for the respondents further submits that, however, later on petitioner filed an application for additional evidence to examine three witnesses and the same was rightly declined by the learned trial Court being filed at a belated stage when both the parties have already concluded their evidence. So, prayer is made that present petition be dismissed.

5. I have considered the submissions made by counsel for the parties.

6. Respondents No.1 to 3 being daughters of Inderjit Singh have filed the suit on the basis of natural succession. The suit is contested by the petitioner who has placed reliance on registered will dated 07.01.1987 stated to be executed by Inderjit Singh in his favour. The trial Court framed the issues but due to inadvertence no issue with regard to genuineness of will in question was framed. The parties lead their evidence with regard to the other issue and petitioner also sought permission to lead secondary evidence in order to prove execution of will dated 07.01.1987 and the same was allowed by the learned trial Court vide order dated 14.09.2015. At the later stage when the parties concluded their evidence, it came to the notice of the trial Court that no specific issue with regard to the execution of will in question was framed and consequently, additional issue No.5-A was framed to this effect vide order dated 09.03.2016 and its onus was placed on the petitioner but at that time counsel for the petitioner made statement that he does not to lead any further evidence with regard to additional issue and the application moved by the petitioner to lead additional evidence was declined by the learned trial Court vide impugned order (Annexure P-7).

7. It is evident that onus is upon the petitioner to prove the genuineness of will dated 07.01.1987 alleged to be executed by his father in his favour. During arguments, the counsel for the petitioner gave undertaking that only deed writer of the will in question is to be examined by the petitioner by way of additional evidence.

8. The Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (2005)6 SCC 344** held that in spite deletion of provision of Order 18 Rule 17-A CPC, the right to produce evidence at a later stage by way of additional evidence is not taken away as the Court has inherent power under Section 151 CPC for advancement of justice.

9. Further, the Courts are meant to impart substantive justice and should follow pragmatic and justice oriented approach in order to render complete justice and the procedural technicalities should not be given precedence over the substantive justice.

10. This Court is of the view that the request made by the petitioner to lead additional evidence with regard to will in question could not be declined just on the ground that the concerned application was filed at a belated stage or that the counsel for the petitioner already made statement to close his evidence. This Court is further of the view that interest of justice demands that one opportunity may be given to the petitioner to lead evidence to discharge his onus with regard to additional issue No.5-A. However, for the same the petitioner could be burdened with costs.

11. Consequently, the instant petition is allowed and impugned order is set aside. One last opportunity is granted to the petitioner to examine

the concerned deed writer of Will in question by way of additional evidence in support of issue No.5-A subject to costs of Rs.25,000/- which is to be paid by the petitioner to the opposite party on the next date fixed before the trial Court.

08.08.2023
Jiten

(KARAMJIT SINGH)
JUDGE

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