

CR-1655-2023(O&M)

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

CR-1655-2023(O&M)

Date of decision:-17.5.2023

Dera Baba Maya Giri village Banarsi through its authorized members

...Petitioners

Versus

Kura Ram (since deceased) through his LR's and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P. Singh, Advocate
for the petitioners.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 3.2.2023 passed by the Court of Civil Judge (Jr.Divn.), Moonak vide which he had allowed the application filed by the plaintiffs for permission to examine Handwriting Expert regarding opinion of signatures of Narsi Ram on Will dated 15.5.2006 claimed by the defendants.

2. Briefly stated, facts of the case are that plaintiffs Kura Ram and others had brought a suit against defendants Meehan Singh and others, seeking a declaration that plaintiffs are owners and entitled to possession of land measuring 62 kanals 10 marlas situated within the revenue estate of village Banarsi, Tehsil Moonak by inheritance from Narsi Ram son of Smt.RamPiari in equal shares and the alleged unregistered will dated 15.5.2006 executed by Narsi Ram in favour of Dera Maya Giri is illegal, null and void etc.

3. On getting notice, majority of the defendants had appeared

and filed written statement contesting the suit. Issues on merits were framed. During the course of proceedings, the plaintiffs had filed the application in question for permission to examine the Handwriting Expert, which was opposed by the defendants tooth and nail. However, it was allowed by the trial Court vide the impugned order. For ready reference, the operative part of the order is being read as under:-

7. After hearing both the parties and after perusing the documents placed on record I am of the view that the plaintiffs have challenged the will dated 15.5.2006 allegedly executed by Narsi Ram with regard to suit property. Perusal of the file shows that during the trial of the present case the plaintiffs moved an application on 28.5.2018 for giving directions to the defendants to first lead their evidence on the above said will dated 15.5.2006 but the above said application was declined by the learned predecessor of this court vide order dated 28.8.2018.

8. Further perusal of the file shows that during evidence of the plaintiffs, the plaintiffs moved an application on 30.4.2019 for giving directions to the defendants to produce the original will dated 15.5.2006 but the same application was also declined by the learned predecessor of this Court vide order dated 30.4.2019. Thereafter, the original Will was produced in the Court for the first time in the evidence of defendant witness DW2. A certified copy of the above said will is produced on record as Ex.D2. The defendants have examined handwriting expert in their defence to prove the execution of the above said will.

9. *After complete discussion, I am of the view that it is correct that the plaintiffs were in knowledge of the fact regarding the will dated 15.5.2006 and they have also challenged the same in the present suit. The plaintiffs moved different applications at the relevant time to give evidence in affirmative on the above said will but the same were declined. At this stage, I do not find any lapse on the part of the plaintiffs. Further, I am of the view that the opportunity must be granted to the plaintiffs to prove their case and opportunity must be granted to the plaintiffs to rebut the evidence of the defendants and the execution of above said will.*

10. *Further, I am of the view that declining the present application also will amount to declining every opportunity to the plaintiffs to rebut the execution of above said will dated 15.5.2006 and to rebut the evidence of the defendants. Hence, in the interest of justice, the present application is liable to be allowed.*

11. *Hence, in view of the discussion made above and in view of the facts and circumstances of the present case and in interest of the justice, the present application of the plaintiffs to examine the handwriting expert in rebuttal evidence is hereby allowed.*

4. Such order left defendant No.6 aggrieved and it has approached this Court by way of filing the present revision petition

5. I have heard learned counsel for the petitioners besides going through the record and I find that there is absolutely no merit in the revision petition.

6. The plaintiffs claimed themselves to be LR's of Narsi Ram and they have brought the suit in question seeking inheritance to his estate by natural succession and challenging the unregistered Will claimed by defendants Dera Baba Maya Giri etc. Such Dera after putting in appearance in the Court have filed written statement. As per typed copy of order dated 16.4.2018 produced by learned counsel for the revision petitioners following issues had been struck:

1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to separate possession by way of partition? If so to what extent? OPP.
3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.
6. Whether the plaintiff has concealed the material facts from the Court and has not come to the Court with clean hands? OPD.
7. Whether the plaintiff is estopped by his own act and conduct from filing of the present suit? OPD.
8. Whether the suit of the plaintiff is within period of limitation? OPP.
9. Relief.

7. A perusal of these issues goes to show that those have not been framed by proper application of mind. A very vague and ambiguous issue No.1 "*Whether plaintiff is entitled to declaration as prayed for?*"

OPP” has been framed, which does not make any sense. Very clear and precise issue should have been framed. The crucial issue as to whether Narsi Ram deceased had executed Will dated 15.5.2006 in favour of Dera Baba Maya Giri, putting the onus of proof on defendants has not been framed by the trial Court. Since the defendants are propounding the Will, the onus to prove thereof is upon them. It is only after the defendants lead their evidence with regard to proof of the Will, the plaintiffs would get an opportunity to lead evidence in rebuttal. As a perusal of the impugned order goes to show the plaintiffs had moved an application on 28.5.2018 for giving directions to the defendants to lead their evidence first on the Will but it was declined by the trial Court and further the plaintiffs had moved an application on 30.4.2019 for giving directions to defendants to produce original Will dated 15.5.2006. That application was also rejected by the trial Court and original Will was produced in the Court for the first time during evidence of defendant appearing as DW2. The defendants had examined Handwriting Expert to prove execution of the Will. Denying an opportunity to the plaintiffs to rebut that evidence by examining a Handwriting Expert/Forensic Expert would have resulted in causing great prejudice to the plaintiffs. The trial Court was fully justified in allowing the application so moved by the plaintiffs.

8. As regards the judgment *Radha Devi Versus Ram Gopal (since deceased) through his LRs and others, 2019(1) PLR 18* referred to by learned counsel for the revision petitioner, that is not applicable to the present case due to different facts and circumstances of the case and the context in which such observations had been made.

9. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No