

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

CR-1658-2023
Date of Decision:-**17.08.2023**

KRISHNA DEVI

... Petitioner(s)

Versus

PURSHOTAM DASS DECEASED TH LRS AND ORS

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate and
Mr. Anupam Mathur, Advocate
for the petitioner.

Mr. Chetan Slathia, Advocate,
for respondents No.1 to 3.

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KARAMJIT SINGH, J. (Oral)

1. The present petition has been filed by the petitioner/plaintiff against the order dated 9.2.2023 passed by the Court of Additional Civil Judge (Senior Division) in civil suit titled as Krishna Devi vs. Purshotam Dass and Ors., whereby application filed by the petitioner for re-casting of issues was dismissed.
2. The brief facts of the case are that the petitioner being daughter of Champa Devi filed suit for declaration regarding estate of her mother on the basis of natural succession and she took plea that Champa Devi

died intestate. The suit is contested by respondents No.1 to 3, who filed written statement, wherein Will dated 22.5.1992 stated to be executed by Champa Devi has been propounded. The learned trial Court framed issues in the year 2011. Thereafter, petitioner concluded her evidence and when the case was fixed for defendants evidence, the petitioner filed an application under Order 14 CPC for recasting of issues which were already framed on 16.9.2011. The said application has been dismissed by the trial Court vide impugned order dated 9.2.2023.

3. The counsel for the petitioner *inter alia* submits that the execution of Will dated 22.5.1992 is to be proved, as per law by the defendants who have set up the said Will and thus onus to prove execution of any such Will executed by Champa Devi is on the defendants. It is further submitted that however onus is upon the petitioner to prove that the alleged Will dated 22.5.1992 is a fake document. The counsel for the petitioner further submits that accordingly petitioner filed an application for recasting of issues but the learned trial Court declined the same. The counsel for the petitioner further submits that if the issues are re-casted, as per the settled position of law, the petitioner will lead evidence only in rebuttal to the evidence led by the defendant regarding execution of Will and thus there is no question of de-novo trial. So prayer is made that proper issues be framed in the light of the application filed by the petitioner in this regard.
4. The present petition is resisted by counsel for respondents No.1 to 3, who while supporting the impugned order submits that there is no

need to re-caste the issues. The counsel for respondents No.1 to 3 further submits that in the instant case, the petitioner has already concluded his evidence and even the defendants have already led some evidence and the application for re-casting of issues was filed at the belated stage. It is further contended that the issues which are already framed by the trial Court are covering the rival claims of both the parties and the parties are already fully aware of the issue in dispute and have led their evidence on same lines. So prayer is made that the present petition be dismissed being devoid of merits. In support of his contentions, the counsel for respondents No.1 to 3 has placed reliance upon **Bharpur Singh and Ors. vs. Shamsher Singh, 2009(1) RCR (Civil) 826 (SC)** and decisions of this Court in **Swaran Singh and Ors. vs. Balwinder Singh and Ors., 2015(5) RCR(Civil) 645;** and **Smt. Kamla and Another vs. Bhoop Singh and Another, 2010(5) RCR(Civil) 674.**

5. I have considered the submissions made by counsel for the parties.
6. The petitioner filed an application for re-casting of issues as under:-
 - i. Whether Smt. Champa Devi ever executed any valid Will dated 22.5.1992 in favour of defendant No.1 and father of defendants No.2 to 5? OPD
 - ii. Whether in case the Will dated 22.5.1992 allegedly executed by Smt. Champa Devi in favour of defendant No.1 and father of defendants No.2 to 5 is not proved to be validly executed by Smt. Champa Devi then whether mutation on the basis of same bearing No.4537 and subsequent entries in the revenue record as illegal, null and void, in effective and not binding on the rights of the plaintiff? OPP

7. Admittedly the petitioner has filed suit for declaration with regard to estate of her mother Champa Devi (since deceased), on the basis of natural succession, whereas the defendants have set up Will dated 22.5.1992 stated to be executed in their favour by Champa Devi. It is settled position of law that the propounder of Will has to prove the due execution of the same in accordance with provisions of law and in case the person contesting the Will alleges fraud, undue influence or coercion, the onus will be on him to prove the same. Further as per provisions of Order 14 Rule 5 CPC, the Court has power to amend and strike out issues at any time before passing a decree.
8. It is pertinent to note that no specific issue with regard to execution of Will was framed by the learned trial Court vide earlier order dated 16.9.2011. The copy of the said issues is Annexure P-4. This Court is of the view that the learned trial Court should have framed specific issue with regard to execution of Will in question and its onus should be on the defendants and issue with regard to the allegations of fraud etc. may also be framed, placing its onus on the petitioner/plaintiff. Thus the impugned order cannot be sustained in the eyes of law.
9. Consequently the impugned order is hereby set aside. Issue No.1 is recasted and additional issue No.2-A is framed as follows:-
 1. Whether Smt. Champa Devi executed valid Will dated 22.5.1992 in favour of defendant No.1 and father of defendants No.2 to 5, if so its effects? OPD
 - 2-A. Whether the Will dated 22.5.1992 is result of fraud, impersonation and is not a genuine document, if so its effect? OPP

10. Admittedly at present the suit is fixed for remaining evidence of defendants. So they will lead evidence in affirmative to prove aforesaid **issue No.1**. Thereafter the petitioner has got right to lead evidence in rebuttal to issue No.1 and to prove aforesaid additional **issue No.2-A**.
11. Taking into consideration the fact that the civil suit is pending for the last more than 10 years, the learned trial Court is directed to expedite the trial and to dispose of the same preferably within next 8 months of the receipt of certified copy of this order.
12. The civil revision petition is disposed of in the aforesaid terms.

17.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No