

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

134

2023:PHHC:091129

CR-1969-2023

Date of decision: 19.07.2023

KUTIAN KERAN AND ANR.

..Petitioners

Versus

JASVIR SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pranav Handa, Advocate
for the petitioners.

Mr. Bhawesh Chaudhary, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The petitioners herein are the plaintiffs in a pending suit for the grant of the decree of declaration with a consequential relief of permanent injunction. The plaintiffs while filing the suit have stated that Sant Inder Dass executed a registered Will on 31.03.1973, whereas, Mahant Dilbagh Dass executed a registered Will on 19.04.1996, which was registered on 08.01.1997. The plaintiffs while leading their evidence failed to produce and prove the execution of both the Wills. Now, the case is at the stage where defendants have to adduce evidence. An application filed by the plaintiffs for the permission to lead additional evidence has been dismissed by the trial Court on the ground that the same has been filed at a belated stage and the plaintiffs were aware of the documents and such lacuna cannot be permitted to be filled up.

2. This Revision Petition has been filed to challenge the correctness of the aforesaid order passed by the trial Court.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the petitioners submits that the original Will was in the possession of a devotee residing in England. Hence, previously the plaintiffs could not produce and prove the Wills. He submits that now the aforesaid devotee has come back and handed over the aforesaid Wills to the plaintiffs. He submits that the Court has taken a narrow view of the matter particularly when the decision of the entire case is dependant upon the aforesaid two registered Wills.

5. On the other hand, the learned counsel representing the defendants submits that at this stage, the Court should not permit the plaintiffs to fill up the lacuna.

6. Previously, there was a specific provision under Order XVIII Rule 17A of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') to file an application for permission to lead additional evidence, which was deleted. However, the Court in the exercise of its inherent power still has the power to permit the parties to lead additional evidence during the course of trial. Such power is also available to the First Appellate Court in accordance with Order XLI Rule 27 of the CPC.

7. Generally, while leading the additional evidence, the party wishes to make good the deficiency, which remained while leading the evidence earlier. In other words, the purpose of filing an application for permission to lead additional evidence is to fill up the lacuna. Hence, the trial Court has wrongly held that the plaintiff cannot be permitted to fill up the lacuna.

8. Undoubtedly, the plaintiffs were aware of the documents i.e. both the Wills, however, they have disclosed the reasons for failure to produce the Wills when they were leading evidence. Both the Wills are

registered Wills. They were executed in the year 1973 and 1996/97. It is for the plaintiff to prove the Will in accordance with law. Being the propounders, they are also required to dispel all the suspicious circumstances surrounding the non-production of Will. However, at this stage, they cannot be deprived of an opportunity to prove the Wills particularly when the case is pending before the trial Court. The trial Court should have adopted a broader approach while deciding such an application. It is not the case of the defendants that the petitioners for malafide reasons, did not produce both the Wills.

9. Keeping in view the aforesaid facts, the impugned order is set aside. The plaintiffs are permitted to produce the Wills and prove the same.

10. The defendants will have the opportunity to lead counter evidence. However, since, there was a delay in production of both the Wills, hence, the opportunity shall be subject to the payment of cost of Rs.20,000/- to defendants. The payment of costs shall be the condition precedent for proceeding further.

11. Disposed of accordingly.

12. All the pending miscellaneous applications, if any, are also disposed of.

July 19th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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