

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

CR-726-2023(O&M)

Date of decision:-6.2.2023

Rakesh Prashar and another

...Petitioners

Versus

Smt.Usha Prashar and others

...Respondents

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

Present: Mr.Rajiv Anand, Advocate
for the petitioners.

Mr.R.S. Bains, Senior Advocate with
Mr.Saurabh Bedi, Advocate
for the respondents.

H.S. MADAAN, J.

1. In appeal titled 'Rakesh Prashar and another Versus Smt.Usha Prashar and others' pending in the Court of Additional District Judge, Chandigarh, the appellants had filed an application under Order 41 Rule 27 CPC for additional evidence to examine Sh.R.K. Verma one of the attesting witnesses of the registered Will dated 4.10.1994 by way of additional evidence.

2. According to the appellants, the respondents in appeal had filed a suit seeking a declaration that they are owners in possession of Booth No.3025/D, Sector 22-D, Chandigarh and that Will dated 4.10.1994 is null and void. That suit was decreed by the trial Court, against which

the defendants/appellants had preferred an appeal. During the pendency of the suit, the defendants/appellants had examined Sh.Rabhbir Singh as attesting witness of the Will, who had tendered his affidavit on 31.5.2014 but he could not be cross-examined for the reason that he was not keeping good health due to old age, thereafter, the evidence of the defendants was closed vide order dated 19.7.2014; the defendants had filed an application for appointment of a Local Commissioner to record the statement of this witness but it was dismissed vide order dated 24.7.2014; the order was challenged before the High Court by way of filing a revision petition, which was also dismissed on 4.10.2016; however, during the pendency of the revision petition, the applicant/appellants came to know the whereabouts of second witness R.K. Verma and had filed an application for recording his statement and other three witnesses but that application was dismissed vide order dated 9.11.2016; the applicants/appellants had filed a revision petition against that order, which was also dismissed by the High Court; thereafter the applicants/appellants had then approached Supreme Court by way of filing SLP, which was also dismissed vide order dated 3.1.2017. Nevertheless the examination of RK Verma witness is necessary for just decision of the case, therefore the application be allowed.

3. The application was resisted on behalf of the respondents. It was dismissed vide a detailed order dated 4.7.2022 by Additional District Judge, Chandigarh.

4. Feeling aggrieved, the petitioners/defendants have approached this Court by way of filing the present revision petition.

5. The respondents/plaintiffs have also appeared through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. Admittedly, a similar application filed by the appellants had been dismissed by the trial Court and such order passed by the trial Court had been upheld by superior Courts upto Hon'ble Supreme Court. It being so, the application in hand cannot be allowed now. It was rightly dismissed by the Additional District Judge, Chandigarh vide the impugned order.

8. The impugned order passed by the First Appellate Court of Additional District Judge, Chandigarh 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.

9. 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.

6.2.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No