

129 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 4495 of 2023(O&M)

Date of Decision: 09.08.2023

Dinesh Kumar

...Petitioner

Versus

Sunil Kumar & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Ankit Chowdhri, Advocate
For the petitioner.

KARAMJIT SINGH, J.

1. The present petition has been filed by petitioner/ plaintiff against the order dated 29.07.2023 (Annexure P-6) passed by the Court of Civil Judge (Jr.Divn.), Chandigarh whereby an application (Annexure P-4) filed by respondents/ defendants under Section 151 CPC read with Section 69 of Indian Evidence Act, was allowed subject to costs of Rs.10,000/-.

2. The counsel for the petitioner while assailing the aforesaid order, submits that the suit property was owned and possessed by Waishno Digambar who was father of petitioner as well as respondents and he died on 09.05.2000. After the death of his father, petitioner filed suit for partition and specific possession of suit property i.e. H. No. 2356 Sector 44-C, Chandigarh on the basis of natural succession in the year 2016. That the suit is contested by the respondents who have propounded will dated 16.01.1997 alleged to be executed by Waishno Digambar in their favour. It is further submitted that the petitioner/ plaintiff concluded his evidence in January, 2019 and thereafter the defendants also led evidence and finally they closed their evidence on 27.01.2023 and thereafter the suit was fixed for final

arguments and arguments were partly heard at which stage the respondents filed an application seeking permission to examine Rajesh Walia son of Late Gurbhajan Singh Ahluwalia in order to prove will in question on the ground that aforesaid witness is required to be examined in order to prove the signatures of Gurbhajan Singh Ahluwalia, one of the attesting witness of the will. The counsel for the petitioner further submits that earlier respondents filed an application to examine Gurbhajan Singh Ahluwalia through Local Commissioner but in the meantime the said alleged marginal witness of will died and then the said application was withdrawn on 18.07.2022. The counsel for the petitioner further submits that the present application has been filed at a belated stage to delay the proceedings and even otherwise the respondents tried to mislead the Court by giving wrong address of Rajesh Walia in order to project that he was living separately from his father Gurbhajan Singh Ahluwalia. The counsel for the petitioner further submits that the final arguments in part were already advanced on behalf of the petitioner wherein objection was raised that respondents have failed to prove the execution of will in question as per the provisions of law and only thereafter the application was filed to examine Rajesh Walia to fill up the lacuna. The counsel for the petitioner further submits that in the given circumstances the impugned order being illegal is liable to be set aside.

3. I have considered the submissions made by counsel for the petitioner.

4. There is no doubt that petitioner filed suit for partition of the house in question which was previously owned and possessed by his father Waishno Digambar who has died on 09.05.2000. It is also admitted fact that petitioner and respondents are children of Waishno Digambar. The petitioner

is claiming his share in the suit property on the basis of natural succession whereas the respondents have set up will dated 16.01.1997 alleged to be executed with Waishno Digambar in their favour. As per counsel for the petitioner the said document is an unregistered will and saw light of the day for first time in the year 2012 and is a fake document. It is also apparent that the parties had already concluded their evidence and even advanced part of final arguments when respondents filed an application to examine Rajesh Walia in order to prove signatures of his father Late Gurbhajan Singh Ahluwalia who signed the will in question as its marginal witness. Admittedly, both the marginal witnesses of the will are not alive and respondents also filed an application under Order 26 to get examine Gurbhajan Singh Ahluwalia through Local Commissioner but in the meantime the said marginal witness died and the concerned application was withdrawn on 18.07.2022.

5. Sections 68 and 69 of Evidence Act are with regard to the procedure to be followed in order to prove any will. In the instant case, the provision of Section 69 of Evidence Act will be applicable as both the attesting witnesses of will are stated to have died and as per the said provision of law the will in question could be proved by examining witnesses who are able to identify the signatures/ attestation of one attesting witness atleast on the will in question.

6. In the instant case the respondents intend to examine Rajesh Walia son of Late Gurbhajan Singh Ahluwalia one of the attesting witness of the will in order to identify the signatures of said attesting witness on will in question as per the provisions of Section 69 of Evidence Act. The said evidence is necessary for the just decision of the case. However, there is no

doubt that the request for the same was made at the belated stage and for that the learned trial Court rightly burdened the respondents with cost of Rs.10,000/-.

7. Even otherwise, as per the law laid down by Hon'ble Apex Court in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (2005) 6 SCC 344**, the party can be allowed to lead additional evidence even at the belated stage if the same is required for just decision of the case.

8. For the foregoing reasons, no ground is made out to interfere under Article 227 of the Constitution. Consequently, the present revision petition is dismissed being devoid of merits. However, any observations made hereinabove are not to be construed as an expression of opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

09.08.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No