

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

CR-4264-2014 (O&M)
Date of decision : 07.02.2023

Manjeet Kaur

... Petitioner(s)

Versus

Surendra Singh & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gurcharan Dass, Advocate for the petitioner.

Mr. Namit Gautam, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 22.05.2014 whereby the application filed by the plaintiff-respondent No.1 for leading additional evidence has been allowed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration that he is the exclusive owner in possession of House No.6-C, measuring 580.5/9 sq. yards., as fully described in the plaint and for declaration that defendant Nos.4 and 5 in the suit were exclusive owners of the property No.11-A/7, Western Extension Area, Karol Bagh, New Delhi and that the defendant Nos.1 to 3 are owners of property No.59-G, B.R.S. Nagar, Ludhiana. When the case was fixed for arguments, an application was filed under Section 151 of the Code of Civil

Procedure, 1908 (CPC) for permission to lead additional evidence on the ground that earlier the attesting witnesses of the Will dated 19.08.1966 were not traceable and that it had now come to the knowledge of the plaintiff-respondent No.1 that both the attesting witnesses i.e. Shri Amar Nath Bhakoo had died on 14.11.1999 and Shri Manna Singh had died on 14.03.1976. It was further averred in the application that sons of both the witnesses have now been traced and the plaintiff-respondent No.1 wanted to examine the said two witnesses in order to prove the Will dated 19.08.1966. The defendants all barring the defendant No.7-petitioner herein raised no objection to the application. However, a detailed reply was filed by the defendant No.7-petitioner herein on the ground that it is not believable that the plaintiff-respondent No.1 did not have the knowledge that the marginal witnesses were to be examined. The further objection was that the affidavit of Shri F.C. Bhakoo son of Shri Amar Nath Bhakoo has not been supplied and hence the defendant No.7-petitioner would not be in a position to cross-examine the said person. It was further stated in the reply that no reasonable ground has been made out for filing of the application for additional evidence. Vide the impugned order, the application was allowed. Aggrieved by the said order, the present revision petition has been filed.

Learned counsel for defendant No.7-petitioner would contend that at the fag end of the case the application for additional evidence was filed. It is further the contention that the impugned order is a totally non-speaking order and does not even advert to the reply filed by the defendant No.7-petitioner.

Per contra, learned counsel for the plaintiff-respondent No.1 has stated that both the attesting witnesses were not traceable and hence not examined. The moment it came to the knowledge of the plaintiff-respondent No.1 that both the attesting witnesses had died leaving behind their sons, the present application for additional evidence was filed. In support of his contentions, learned counsel for the plaintiff-respondent No.1 has relied upon the judgments of this Court in the cases of **Omwati Vs. Anita Devi & Ors. [2015 (61) RCR (Civil) 479]**; **Shavitiri & Ors. Vs. Ram Niwas & Ors. [2015 (8) RCR (Civil) 689]**; **Kirpal Singh Vs. Smt. Tarowati & Ors. [2010 (1) RCR (Civil) 307]**; **Mohinder Singh Vs. Bhajan Kaur [2000 (4) RCR (Civil) 578]** and **Rangila Singh Vs. Jagtar Singh [2001 (4) RCR (Civil) 506]**.

Heard.

In the present case, though the evidence for proving the Will had to be led in the affirmative, but cogent reasons have been given by the plaintiff-respondent No.1 for not being able to examine the attesting witnesses in the affirmative. It was stated in the application for additional evidence that both the attesting witnesses of the Will, which is dated 19.08.1966, were not traceable and as soon as it came to the knowledge of the plaintiff-respondent No.1 that both the attesting witnesses had died leaving behind their sons, that the present application was filed.

It is trite that the additional evidence can be permitted at any stage if it could facilitate the Court in arriving at a just and effective decision. In the present case in order to prove the Will, the evidence of the

said witnesses would be necessary and in view of the fact that both the

witnesses were not traceable at an earlier point of time, the application has rightly been allowed by the Trial Court. The argument of counsel for the defendant No.7-petitioner that the application has been moved at the fag end deserves to be rejected inasmuch as an application for additional evidence can be moved at any stage and if the same facilitates the Court in arriving at a just and effective decision, the same would be allowed.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. It is, however, made clear that the plaintiff-respondent No.1 shall bring the witnesses at his own responsibility and the Trial Court shall give only two effective opportunities to the plaintiff-respondent No.1 to produce the witnesses. The Trial Court shall also give an effective opportunity to the defendant No.7-petitioner to rebut the evidence of the plaintiff-respondent No.1.

Keeping in view the fact that the application has been moved at the fag end of the trial, the plaintiff-respondent No.1 shall compensate the defendant No.7-petitioner by paying costs of Rs.30,000/-.

It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case. Disposed off, accordingly. Pending applications, if any, also stand disposed off.

07.02.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO