

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7548 of 2019 (O&M)
Date of Order: 07.08.2023

Naveen and another

.Petitioners

Versus

Dharambir

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jayant, Advocate, for
Mr. P.R.Yadav, Advocate,
for the petitioners.

Mr. Ashish Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. The petitioners herein are the defendants in a pending suit for grant of declaration with consequential relief of permanent injunction filed by the plaintiff (respondent herein).

2. The trial court framed the following issue for adjudication:-

“1. Whether the plaintiff is entitled to seek relief of a decree for declaration on the ground as alleged?OPP”

3. In this case, the dispute is with regard to the correctness and genuineness of the alleged testamentary disposition of Smt. Murti Devi, however, the trial court did not frame any distinct issue. Thus, the Civil Judge framed an additional issue and directed the parties to lead evidence.

The additional issue which has been framed reads as under:-

“2(A) Whether the Will bearing Vasika No.45/3 dated

19.08.2016 was validly executed by Smt. Murti Devi in favour of the defendants?OPD”

4. Before framing of the additional issue, an application was filed by the plaintiff to permit him to examine the Handwriting and Finger Print Expert in rebuttal evidence, which was also allowed by the court on 21.09.2019.

5. The learned counsel representing the petitioners (defendants in the suit) submits that the trial court has erred in placing onus to prove additional issue on the defendants. He submits that the plaintiff claims that the aforesaid Will is forged and fabricated and therefore the onus should be on the plaintiff.

6. This court has considered the submissions of the learned counsels representing the parties.

7. It is well settled that the onus to prove the testamentary disposition is on the propounder. The defendants have propounded the will allegedly executed by Smt. Murti Devi. Hence, the trial court has placed onus on the defendants to lead evidence.

8. As regards the order passed by the trial court permitting the plaintiff to lead rebuttal evidence, the same is not sustainable because once an additional issue has been framed, the defendants, at the first instance, are required to be given opportunity to lead evidence and thereafter the plaintiff would have the opportunity to counter the evidence led by the defendant.

9. Keeping in view the aforesaid facts and discussions, the revision petition is disposed of while directing the trial court to give an opportunity in the first instance to the defendants to lead evidence in order to

prove the testamentary disposition. Thereafter, the plaintiff shall be entitled to lead evidence.

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

August 07, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO