



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-742-2018(O&M)

Date of Decision: May 21, 2024

Madhu Sudan

...Petitioner

Versus

Prem Chand and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vivek Gupta, Advocate
for the petitioner.

Mr.Ajit Singh Lamba, Advocate for
Mr.Vinit Kumar Choubey, Advocate
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 16.01.2018 (Annexure P-1) passed by learned trial Court, whereby, an application filed by the petitioner to examine the witness of the questioned Will was dismissed.

The facts, as culled out, from the paperbook, are as follows:-

That, respondent-Prem Chand had filed a suit against the petitioner and other defendants, thereby, seeking declaration that he is the owner in possession to the extent of 1/8th share in the property, as detailed in the head-note of the plaint (Annexure P-1) and further also sought declaration



that in case defendant No.2 is not held to be owner in possession of the double storeyed house, then he is also owner to the extent of 1/4th share of the questioned house and also assailed the Will dated 02.06.2006, allegedly executed by Siri Niwas, in favour of defendant No.1 i.e. the present petitioner.

After the closure of the plaintiff's evidence, the petitioner had examined one of the attesting witness namely, Karan Singh of the questioned Will on 22.02.2017. However, at that time, cross-examination of the said witness was deferred on the ground that other witness will be examined on the same day. The copy of the statement of Karan Singh recorded on 22.02.2017 is Annexure R-2. However, on 16.05.2017, Giriraj, another witness, who is now intended to be examined, was given up by the petitioner, on account of health issues.

It was subsequently, the application was filed to examine Giriraj, another attesting witness to the questioned Will. Therein, it was mentioned that plaintiff had challenged the registered Will dated 02.06.2006 executed by Siri Niwas, in favour of the petitioner-defendant No.1. It is asserted in the application that other witness was given up on 16.05.2017, due to objection raised on behalf of the plaintiff's counsel and on account of his having poor health. Furthermore, it was also asserted that thereafter witness Karan Singh was examined, who colluded with the plaintiff and became hostile.

Reply to the said application was filed.

After hearing learned counsel for the parties, vide impugned



order, the said application was dismissed.

Now, it is submitted by learned counsel for the petitioner that it was on account of Giriraj not keeping good health, that the said witness was given up by the counsel, at first instance and therefore, in the given circumstances, it is submitted that on account of validity of questioned Will to be in question, now there is necessity of examination of Giriraj as witness. Much resistance is shown to the submissions so made by learned counsel for the petitioner. Learned counsel for respondent No.1 assiduously submits that both the witness were required to be examined, at the same time and solely, on this ground, on 22.02.2017, the cross-examination of Karan Singh, another witness of the Will in question was deferred. He was cross-examined, only after witness Giriraj, having been given up by the petitioner.

In the given circumstances, it is submitted that the said witness cannot be allowed to be examined, at this stage. Now, by way of examination of second witness to the Will, the petitioner intends to fill in the lacunae, coming forth, in the cross-examination of Karan Singh, who was also attesting witness.

For proving the execution of the Will, it is incumbent upon the person, who relies upon this document, to examine one of the attesting witness in proof of the execution of the Will, but however, nowhere, it is the requirement of law that both the attesting witnesses to the Will, as such, cannot be allowed to be examined.

It is pertinent to mention that though DW-2 Karan Singh had



been examined and tendered into evidence his affidavit on 22.02.2017, but his cross-examination was deferred, on the ground that other witness will be examined on the same day. On the subsequent date, Giriraj was given up, on account of health issues, as evident from the statement, copy whereof is Annexure R-3. In the light of the same, if the application has been filed subsequently to examine the said witness, solely on account of cross-examination of Karan Singh, another witness having been conducted earlier, do not debar the petitioner from examining other witness i.e. Giriraj.

The appraisal of the testimonies of Karan Singh as well as Giriraj, who is proposed to be examined now, shall be appraised at a later stage, but however, the said witness, in the fitness of the circumstances, for the proper adjudication, ought to be examined.

Hence, the present revision petition is hereby allowed, subject to payment of Rs.5,000/- as costs, and the impugned order is set aside. The application filed by the petitioner is hereby accepted, thereby, giving a chance to the petitioner to examine Giriraj, as a witness.

May 21, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No