

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.130

Case No. : CR No.1082 of 2024 (O&M)

Date of Decision : February 22, 2024

Jaswinder Kaur @ Rupinder Kaur
and another
vs.
Devinder Singh

.... Petitioners
.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr.Hitesh Verma, Advocate
for the petitioners.

* * *

GURBIR SINGH, J. :

1. Challenge in the present revision petition is to the order dated 09.01.2024 (Annexure P-4), passed by learned Additional Civil Judge (Senior Division), Barnala (for brevity – Trial Court), vide which the application dated 05.01.2024 (Annexure P-2), moved by the petitioners, for production of original Will dated 22.05.2021 has been dismissed.
2. The brief facts, as culled out from the paper-book and necessary for just decision of the present petition, are that the respondent/plaintiff filed a civil suit for permanent injunction restraining the petitioners/defendants from illegally and forcibly dispossessing the respondent/plaintiff or from interfering in his peaceful possession over the suit land, as mentioned in the plaint.
3. Ajmer Singh – father of respondent/plaintiff and his brother Jang Singh (uncle of respondent/plaintiff) were owners in possession of the suit

property. Since Jang Singh was unmarried, he transferred his share in the name of respondent/plaintiff by way of transfer deed. Ajmer Singh, during his life time, had got registered a Will in favour of his wife Shinder Kaur, who further executed Will dated 22.05.2021 qua her share in favour of the respondent/plaintiff. After the death of his parents, the respondent/plaintiff became owner in possession of the suit property.

4. Nirmal Singh – another son of Ajmer Singh and real brother of the respondent/plaintiff was married to petitioner/defendant no.1. From the said marriage, petitioner/defendant no.2 was born. Unfortunately, Nirmal Singh expired and her widow (petitioner no.1) solemnized second marriage.

5. The claim of the respondent/plaintiff is based on the registered Will dated 22.05.2021, which was not annexed with the plaint. The petitioners moved an application dated 05.01.2024 (Annexure P-2) for production of the original Will dated 22.05.2021 but the Trial Court, vide order dated 09.01.2024 (Annexure P-4), dismissed the application.

6. I have heard learned counsel for the petitioners and perused the case file.

7. I intend to dispose of this revision petition without issuing notice to the opposite party so as to avoid unnecessary delay in the matter and further, to save the respondent from the expenses he may have to incur for engaging counsel for the present revision petition.

8. As per provisions of Order 7 Rule 14 CPC, where plaintiff sues upon a document, then he is liable to produce the same in the Court. The learned Trial Court dismissed the application on the grounds that – photocopy of the Will has been placed on record; it does not effect the case

as plaintiff is liable to produce the same in evidence or at any other stage; if plaintiff fails to produce the same, he himself would suffer; onus is on the plaintiff to produce the same and in case of failure to produce the same, adverse inference would be drawn against the plaintiff himself.

9. The impugned order is not sustainable in the eyes of law especially when the case of the respondent/plaintiff rests on the basis of Will, then it is his duty to produce the original Will for the purpose of perusal and examination by the other party. Moreover, no prejudice would be caused to the respondent/plaintiff in producing the original Will for the purpose of perusal and examination of the petitioners.

10. In view of the above, the present revision petition is allowed and impugned order dated 09.01.2024 (Annexure P-4), passed by the learned Trial Court is set aside. The respondent/plaintiff is directed to produce the original Will dated 22.05.2021 in the Trial Court on the date, to be fixed by the learned Trial Court, for the purpose of perusal and examination by the petitioners and thereafter, the Trial Court shall proceed with the suit in accordance with law.

11. However, if the respondent/plaintiff is not satisfied with this order, he can challenge the same by filing appropriate application, within a period of 30 days from today.

12. Pending applications, if any, shall stand disposed of along with this judgment.

February 22, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.

