

CR-2547-2024 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of decision: 08.05.2024

Kailash Chander and another

...Petitioners.

Versus

Rohtas Chander Sahi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Naveen Sharma, Advocate for the petitioners.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 02.04.2024, passed by learned Civil Judge (Junior Division) Ludhiana, vide which the application for permission to examine the witness namely Sh. Amandeep Pal Singh, Advocate through Video Conferencing, was dismissed.

2. The brief facts relevant for adjudication of the present revision petition are that the plaintiff/ respondent filed a suit for declaration to the effect that the plaintiff and defendants are the joint owners to the extent of equal 1/5th share each in each and every portion of the joint un-partitioned property as detailed in the head note of the plaint, left behind by the deceased mother Nand Rani.

3. Upon notice of the aforesaid suit, the defendants appeared and contested the suit by filing the written statement that the suit property was the individual/ self acquired property of father of defendants and plaintiff. It

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was alleged that before his death he executed a legal and valid Will registered with Sub Registrar, Ludhiana vide Wasika No.487 dated 03.07.1990 and bequeathed all his property to his wife and mother of the plaintiff and the defendants namely Nand Rani. After that Nand Rani became the exclusive owner in possession of the property and it became her self-acquired property. She expired on 28.03.2013, But before her death, she executed a Will dated 16.04.2012, registered through Sub Registrar (East), Ludhiana vide Wasika No.42 dated 16.04.2012. Through her will, she bequeathed his property to the plaintiff and defendants No.1 to 3 and only excluded defendant No.4.

4. After conclusion of the plaintiffs evidence, the petitioners/ defendants in their evidence, in order to prove the aforesaid Will executed by their mother, filed an application before the trial Court for seeking permission to examine witness namely, Sh. Amandeep Pal Singh, Advocate through video conferencing as he had permanently moved to Canada. But the said application was dismissed by the trial Court vide order dated 02.04.2024. Hence, the petitioners have knocked the doors of this Court by way of filing the present revision petition.

5. Learned counsel for the revision petitioners has contended that the circumstances leading to filing of the application for examining the aforesaid witness through video conferencing are very significant, as one of the attesting witness of the Will was an Advocate, who had expired and the other witness is relative of the parties, who remains neutral and not intends to come forward to prove the said Will. So now the petitioner wants to examine Sh. Amandeep Pal Singh, Advocate, who has drafted the Will

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dated 16.04.2012 executed by mother of the parties to the present suit. He has further contended the trial Court has given the erroneous findings to the effect that as statement of scribe will not prove the Will, so there is no necessity to examine the said witness as sought by the petitioners. He has contended that it is a matter of record that inspite of summons being issued to the attesting witness Anil Kohli, he is not coming forwarded to depose in the present case. So, if the petitioners would not be provided the opportunity to examine Sh. Amandeep Pal Singh, Advocate as a witness, then it will gravely prejudice their case.

6. I have heard learned counsel for the petitioners and have gone through the relevant record.

7. In the impugned order, the trial Court has discussed the relevant provisions of law for proving the Will and has also referred to some case law in this context. It has been observed that the statement of scribe is not sufficient to prove execution of the Will.

8. In the instant case, the defendants/ petitioners want to examine Sh. Amandeep Pal Singh, Advocate, who allegedly drafted the Will dated 16.04.2012. It has been specifically mentioned in the ground of revision as well as has been contended by learned counsel for the petitioners that one of the attesting witness of the said Will, who was an Advocate has expired and the other attesting witness Anil Kohli has been summoned several times who is not coming forward to depose in the present case, as he is relative of the parties and has opted to remain a neutral figure. So, the defendants/ petitioners now want to examine Sh. Amandeep Pal Singh, Advocate, who allegedly drafted the Will in question. Whether the statement of scribe is

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sufficient to prove the execution of the Will is not to be appreciated at this stage. But in the given circumstances if the petitioners are not allowed to examine the aforesaid witness through video conferencing, then it will adversely effect their case. So the present revision petition deserves to be allowed.

9. As has been alleged that the Sh. Amandeep Pal Singh, Advocate is residing abroad, so permission has been sought to examine this witness through video conferencing. In the instant case for examination of Sh. Amandeep Pal Singh, Advocate by way of video conferencing, there would have to be a Co-ordinator both at the Court point as also at the remote point. The petitioner would not be in a position to get a Co-ordinator at the remote point appointed without a direction of the Court. So direction is issued to the trial Court to examine the witness namely Sh. Amandeep Pal Singh, Advocate by way of video conferencing as per the Rules laid down by this Court for the same. The trial Court would also give a direction in its order regarding appointment of a Coordinator at the remote point in accordance with the rules so that the petitioner is in a position to pursue his matter with the concerned consulate/embassy/High Commission.

10. Revision petition is allowed in the aforesaid terms.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

08.05.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No