

2024:PHHC:093211



S. No.133

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

CR No.4093 of 2024

Date of Decision:24.07.2024

Vinod Mal (deceased) through his LR

.....Petitioner

Vs.

Henri R. Mal (deceased) through his LRs and othersRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Jain, Advocate for the petitioner.

DEEPAK GUPTA, J. (Oral)

The dispute is regarding the estate of Ms. Monika Mal. Plaintiffs sought to have inherited her estate on the basis of natural succession; whereas the defendant (petitioner herein) set up a registered Will dated 16.11.1959 in his favour and other siblings. Necessary issues were framed and parties led evidence. The case reached at the stage of rebuttal/arguments, when application for additional evidence was moved by the defendant (petitioner herein) but the same has been declined by way of the impugned order dated 30.05.2024 (Annexure P.6).

2. Learned counsel contends that the Will in question is of 1959 i.e. more than about 60 years old. Despite all the possible efforts, the petitioners were not able to trace the legal heirs of the two attesting witnesses of the Will, who were advocates and who have since expired, so as to examine them to prove the



signatures on the Will. The application was moved but by observing that sufficient opportunities had already been availed by the petitioners, the same was dismissed.

3. Learned counsel contends that since the petitioners had relied on a registered Will, which was quite an old document, so, it took time to trace the legal heirs of the deceased- witnesses and that the evidence of defendant-petitioner cannot be scuttled merely because of the delay and that opposite party can be compensated by way of cost. Learned counsel also submits that petitioners have, in the meantime, traced the legal heirs of the deceased- attesting witnesses and if necessary opportunity is provided, they will conclude their evidence within next eight weeks.

4. Having regard to the submissions made by learned counsel for the petitioners, this petition is hereby allowed by setting aside the order dated 30.05.2024, subject to 10,000/- as costs, payable by the petitioners to the respondents- plaintiffs by way of demand draft. The trial Court is directed to provide three effective opportunities to the petitioners- defendants so as to prove the Will of Ms. Monika Mal as set up by them. However, as undertaken by the petitioners- defendants through their counsel, they will conclude the evidence within next two months. As such, three opportunities as per this order shall be provided within a period of two months to the defendants so as to prove the Will. Apart from the legal heirs of the attesting witnesses, the petitioners will also at liberty to examine the necessary expert so as to prove the signatures of the testator



-Monika Mal, on the Will. The period of two months is to start from the date of receipt of certified copy of this order by trial Court concerned.

5. Since this order has been passed without issuing any notice to the respondents, so as to avoid unnecessary delay in disposal of the case, therefore, the respondents will be at liberty to approach this Court, in case they will feel aggrieved.

Disposed of.

July 24, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No