

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

125

CR-5009-2023 (O&M)

Date of decision:05.02.2024

Vikas Bhalla

... Petitioner

Vs.

Gautam Dev Bhalla & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Vijay Rana, Advocate for the petitioner.

Mr. Ankur Bansal, Advocate for the respondents.

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SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by the petitioner against the order dated 03.08.2023 (Annexure P-6) passed by the Civil Judge (Jr. Division), Nakodar, whereby application filed by the plaintiff/respondent No.1 for re-framing issue No.4 has been allowed.

2. Brief facts are that the plaintiff/respondent No.1 herein filed a suit for declaration to the effect that the alleged transfer deed dated 31.08.2016 executed by defendant No.1 in favour of defendant No.2 with regard to one shop measuring 1 marla 3 sarsai covered area 365 sq. ft. and one house consisting of two stories measuring 4 marla 6 sarsai covered area 2014 sq. ft. (total 6 marla approximately) which is the portion of the joint property of plaintiff and defendant No.1 bearing No.3099/1 situated at Hospital Road, Nakodar shown red in colour in the site plan was null, void, inoperative, unlawful, collusive without any legal right to sell and further defendant No.1 has got no right, title or interest to execute and register the

transfer deed dated 31.08.2016 and for cancellation of the transfer deed No.995 dated 31.08.2016 executed and registered by defendant No.1 in favour of defendant No.2 with regard to the aforesaid shop and house. Declaration was also sought to the effect that the Will dated 21.04.1989 allegedly executed by Panna Lal father of the plaintiff, defendants Nos.1 and 3, is null and void and does not have any legal effect to the rights of the plaintiff and defendant No.1 with regard to the property bearing No.3099/1 situated at Hospital Road, Nakodar, District Jalandhar and suit for permanent injunction from selling, alienating, leasing, mortgaging or transferring in any manner one half share of the suit property more than their share with specific portion without getting its partition, changing the nature, raising any kind of construction, demolishing any portion of the joint property of the plaintiff and defendant No.1. It was alleged that Panna Lal Bhalla father of the plaintiff and defendants No.1 and 3 was owner of property bearing No.3099/1 vide registered conveyance deed dated 16.01.1963. Panna Lal during his lifetime had sold out 42 marlas of land out of 65 marlas to different persons and thereafter he remained owner in possession of the property in question measuring 22.88 marlas. Panna Lal Bhalla died on 17.06.1994 while leaving behind plaintiff, defendants No.1 and 3 as his only legal heirs. During his lifetime, he had dis-inherited his son Datta Tray Bhalla i.e. defendant No.3 from his moveable and immovable property. So, after death of Panna Lal Bhalla plaintiff and defendant No.1 had become the absolute owner and in possession of the suit property. Defendant No.1 in order to grab the valuable portion in connivance with defendant No.2 – Nirmal Singh, Sub Registrar, witness Mahesh Chander

Bhalla had managed to get registered forged and fabricated transfer deed dated 31.08.2016 in favour of his son defendant No.2 with regard to specific portion of the joint property in question. Defendants No.1 and 2 proclaimed that during his lifetime, Panna Lal Bhalla had executed a registered Will dated 21.04.1989 in favour of the plaintiff and defendant No.1 with regard to the property in dispute. It was alleged that Panna Lal Bhalla during his lifetime had not executed registered Will dated 21.04.1989 in favour of the plaintiff and defendant No.1 and said Will is null and void and has no effect over the legal rights of the plaintiff and is a result of fraud.

3. Defendants No.1 and 2 while contesting the suit filed their written statement and claimed that the Will dated 21.04.1989 is genuine and was executed by Panna Lal in favour of defendant No.1 – Subhash Chander Bhalla and the plaintiff.

4. From the pleadings of the parties, the issues were framed on 07.10.2022 by the trial Court. Thereafter on 28.04.2023, the plaintiff/respondent No.1 herein filed an application for re-framing of issue No.4 alleging that when defendants claimed in their written statement that Will dated 21.04.1989 is genuine and was validly executed by Panna Lal in favour of defendant No.1 – Subhash Chander Bhalla and the plaintiff, then in such circumstances under the provisions of law, heavy burden lies upon the defendant to prove that Will dated 21.04.1989 is genuine and was validly executed in favour of defendant No.1 – Subhash Chander Bhalla and the plaintiff. But inadvertently at the time of framing the issues on 07.10.2022, the Court had put burden upon the plaintiff to prove issue No.4 by framing the issue “whether the plaintiff is entitled for declaration that the Will dated

21.04.1989 allegedly executed by Panna Lal father of the plaintiff is null and void? OPP” instead of framing the correct issue “whether Will dated 21.04.1989 allegedly executed by Panna Lal father of the plaintiff is genuine and validly executed by Panna Lal in favour of defendant No.1 – Subhash Chander Bhalla and the applicant/plaintiff? OPD”. The said application was disposed of by the trial Court vide order dated 03.08.2023 and aggrieved of the said order present revision petition has been filed.

5. In the impugned order, it has been observed that “From the pleadings of the parties it is apparent that the plaintiff has challenged the Will dated 31.08.1989 said to have been executed by Panna Lal. On the other hand, defendants No.1 and 2 have claimed that the Will in question has been executed by their father. Therefore, it is also manifest that the onus to prove the execution and genuineness of the Will in dispute is upon the defendants No.1 and 2, but inadvertently while framing issues, the onus to prove issue No.1 has been affixed upon plaintiff. As such, the said issue is required to be rectified to that extent. Accordingly the application in hand stands allowed. The issue No.4 is re-framed as under:

Whether the plaintiff is entitled for the declaration that Will dated 21.04.1989 allegedly executed by Panna Lal father of the plaintiff is null and void? OPD ”

5. Thus from the impugned order, it transpires that issue No.4 has not been re-framed and rather the earlier framed issue No. 4 framed on 07.10.2022 had been repeated and only the onus had been changed. It is the plaintiff who is seeking declaration that Will dated 21.04.1989 allegedly executed by Panna Lal is null and void, whereas defendants No.1 and 2 are claiming it to be genuine. So if the onus was to be placed upon the

defendants then issue No.4 was required to be properly framed to the effect that whether it was a genuine and validly executed Will. So trial Court is directed to properly reframe issue No.4 and then to place onus regarding discharging the same as per pleadings of the parties.

6. This revision petition is disposed of accordingly.
7. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)

JUDGE

05.02.2024

harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |