

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123****CR-4920-2024 (O&M)****Date of Decision : 01.10.2024**

Naveen Rana

....Petitioner

VERSUS

Karambir and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rohan Moudgil, Advocate for
Mr. Sandeep Sharma, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 20.08.2024 whereby the application filed by the plaintiff-petitioner for examining two more witnesses has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for declaration and mandatory injunction averring in the plaint that he is owner in actual physical possession of the land comprised in Khewat No.546 Khasra No.329/1 (0-16-0) situated within the revenue estate of village Bajghera, Tehsil and District Gurugram. The case set up was that there was a Will left by the mother of the plaintiff-petitioner in his favour. It was further averred that the plaintiff-petitioner was in judicial custody at District Jail, Gurugram at Bhondsi when the mother of the plaintiff-petitioner passed away leaving behind the plaintiff-petitioner as her only legal heir as per the Will. The case was fixed for final

arguments when an application was filed by the plaintiff-petitioner for leading additional evidence i.e. for producing two witnesses, namely, Karan Rana and Rekha Rana. The application was contested on the ground that despite numerous opportunities evidence was not led and that the said witnesses were not included in the list of witnesses and no efforts were ever made to summon the said witnesses and the said witnesses are now being sought to be produced only to fill in the lacunae in the case and that allowing the said application would amount to a *de novo* trial. The Trial Court vide the impugned order dated 20.08.2024 dismissed the application on the ground that the application has been filed when the matter was fixed for arguments. It was further observed that all the witnesses proposed to be examined as additional evidence were well within the knowledge of the plaintiff-petitioner and that the said witnesses were to be examined while leading his affirmative evidence. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that as per Order XVI Rule 1(3) of the Code of Civil Procedure, 1908, the Court may permit a party to call whether by summoning through Court or otherwise, any witness, during the pendency of the suit. It is further the contention that the said witnesses are material witnesses who could not be summoned earlier.

4. Heard.

5. Order XVI Rule 1(3) CPC reads as under :

“1. *List of witnesses and summons to witnesses -*

(1) xx xx xx xx

(2) xx xx xx xx

(3) *The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.”*

6. A perusal of the above reproduced provisions of law clearly reveals that the Court may permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names were mentioned in the list if a party shows sufficient cause for the omission to mention the names of the said witnesses in the list. In the present case a perusal of the application (Annexure P-6) reveals that the application itself is bereft of any reasoning as to why the said witnesses, if they were material witnesses, were not included in the list of witnesses earlier. Infact, the present application was filed at the fag end when the case was listed for arguments. During the course of arguments, learned counsel for the plaintiff-petitioner has contended that the said witnesses are material witnesses for proving the Will. A perusal of the plaint (Annexure P-2) reveals that the suit itself was filed for declaration that the plaintiff-petitioner had become owner of the suit property on the basis of a Will left by his mother. That being so, it was incumbent on the plaintiff-petitioner to have led his evidence in the affirmative to prove issue No.1 the onus of which was cast upon the plaintiff-petitioner. In the absence of any reason forthcoming from the

application as to why the said witnesses were not summoned earlier, no fault can be found with the order passed by the Trial Court.

7. In view of the above, I do not find any merit in the present revision petition which being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.10.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO