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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5312-2023 (O&M)
Date of decision : 15.10.2024

ASHWANI KUMARPetitioner

Versus

SANJEEV KUMARRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.C. Shahpuri, Advocate
for the petitioner.

Mr. Kanwar Rajan, Advocate
for the respondent.

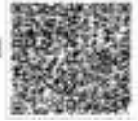
PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against the order dated 7th of August, 2023 whereby the defendant is aggrieved of framing of additional issues by the Trial Court. Onus *qua* which has been placed upon him, the defendant.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondent as the plaintiff.

3. Plaintiff filed suit for separate possession by way of partition by metes and bounds of the suit property which is a residential house

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as detailed out in the head-note of the plaint claiming that he was co-sharer to the extent of 1/2 share.

4. Suit was resisted by the defendant propounding family settlement of the year 1997 and Will purported to have been executed by their father late Sh. Malik Chand Gambhir, dated 16th of June, 2006 in favour of the defendant.

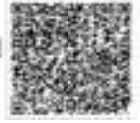
5. Suit filed by the plaintiff was put to trial framing the following issues:

- “1. Whether the plaintiff is entitled separate possession of the suit property by way of partition by metes and bounds? OPP.
2. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for? OPP.
3. Whether the present suit is not maintainable? OPD.
4. Whether the plaintiff has no locus standi to file present suit? OPD.
5. Whether the plaintiff has concealed the true and material facts from the Court if so to what effect? OPD.
6. Relief.”

6. Defendant moved an application seeking additional issues on the basis of the Will propounded by the defendant and the family settlement. The said application has been allowed vide impugned order framing the following additional issues:

- “5(a). Whether the suit property is Joint Hindu Family property, as prayed for? OPD.

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5(b). Whether there was a family settlement dated 13.2.1997 between the parties to the suit, as prayed for? OPD.

5(c). Whether there is a registered Will dated 16.6.2006 executed by Malik Chand Gambhir in favour of defendant, as prayed for? OPD.

5(d). Whether there is a will dated 30.10.1998 executed by Shanti Rani in favour of Malik Chand Gambhir, as prayed for? OPD.

7. Mr. Shahpuri while assailing the impugned order submits that the primary grievance of the petitioner is against framing of issue No.5(d) i.e. w.r.t. the Will executed by Shanti Rani in favour of Malik Chand Gambhir dated 30th October, 1998 and w.r.t. fixing the onus thereof upon the defendant.

8. Mr. Shahpuri submits that from bare perusal of the written statement, it is evident that the defendant/petitioner nowhere propounded the said Will and thus in the absence of any pleadings w.r.t. the same issue ought not have been framed w.r.t. Will executed by Shanti Rani.

9. On being specifically asked w.r.t. source of ownership of Malik Chand Gambhir, Mr. Shahpuri is not in position to deny that the same is Will dated 30th of October, 1998 executed by Shanti Rani.

10. In the considered opinion of this Court, the aforesaid being the facts & circumstances and the defendant having propounded the Will executed by Malik Chand Gambhir is definitely required to prove source of succession by Malik Chand Gambhir which is nothing else but based upon

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the Will executed by Shanti Rani in favour of Malik Chand Gambhir. Trite it is that one who propounds the will is required to prove the same.

11. In view of above, this Court finds that no fault can be found with the impugned order passed by the Trial Court framing that issue. Consequently, the instant revision petition is dismissed.

12. Pending application(s), if any, shall also stand disposed off.

October 15, 2024

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No