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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5453-2024 (O&M)
Date of decision: 20.09.2024

Ramesh Lakhanpal

...Petitioner

Versus

Neetu Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Mandeep Singh Sachdev, Advocate and
Ms. Meher Sachdev, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 31.05.2024 (Annexure P-1) passed by the Civil Judge (Junior Division), Jalandhar whereby an application filed by the plaintiff-respondent for placing on record the Court fee of Rs.50/- has been allowed and it has been further ordered that the petitioner-defendant would first lead evidence in Civil Suit bearing CS No.2043 of 2022 titled as Neetu Sharma Vs. Ramesh Lakhanpal.

2. Learned counsel for the petitioner has submitted that in the present case, a perusal of the amended plaint would show that in addition to the prayer for declaration to the effect that the plaintiff-respondent (hereinafter to be referred as “the plaintiff”) was owner of the property in question, a further prayer had been made for declaration that the alleged Will



dated 07.01.2020 alleged to be executed by Jatinder Sharma propounded by defendant was a forged and fabricated document and was liable to be set aside and a further prayer was also made for mandatory injunction directing the defendant to deliver the vacant possession of first and second floor with respect to the suit property, to the plaintiff. It is submitted that since, the prayer that the Will is a forged and fabricated document had been made by the respondent-plaintiff thus, it is the respondent-plaintiff who has to first lead evidence in this regard and the impugned order directing the petitioner to lead evidence is illegal and deserves to be set aside and directions are to be given to the plaintiff-respondent to lead her evidence first in support of the plea that the Will is forged and fabricated. In support of his arguments, he has relied upon the judgment passed by the Hon'ble Supreme Court of India in case titled as **Daulat Ram Vs. Sodha** reported as **2005(1) SCC 40**.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the pleas raised on behalf of the petitioner are meritless and the present revision petition deserves to be dismissed.

4. The respondent-plaintiff had filed a suit for declaration to the effect that she was owner of the property in question on the plea that her husband Jatinder Sharma had purchased the property vide registered sale deed dated 07.09.1995 and the petitioner-defendant is the real brother of Jatinder Sharma and in the month of October, 2008, the defendant-petitioner had approached the said Jatinder Sharma and had requested for taking first floor of the accommodation of the house for staying with his family as a licensee and had assured Jatinder Sharma that he would vacate the premises



and hand over the vacant possession as and when Jatinder Sharma would ask for the same. It was further pleaded that Jatinder Sharma was diagnosed with cancer in the year 2019 and that respondent-plaintiff and her children had looked after him but unfortunately, he had died on 30.04.2020 and the respondent-plaintiff along with two children had inherited the said property and had become owner of the same. It was further averred that both the children had executed the registered document to transfer their respective shares in favour of the respondent-plaintiff and thus, the respondent-plaintiff had become exclusive owner of the property and that respondent-plaintiff had permitted defendant-petitioner to stay on the first floor as a licensee and since May, 2022, the conduct and behaviour of the defendant-petitioner was not bearable thus, the respondent-plaintiff had terminated the licence on 31.05.2022 and accordingly, filed the suit for mandatory injunction, with other prayers.

5. In para 11 of the plaint, it was specifically stated that legal notice was issued to the defendant-petitioner and reply dated 15.06.2022 was received by the respondent-plaintiff from the counsel of the defendant in which defendant-petitioner had propounded some alleged Will stated to be executed by Jatinder Sharma but the defendant had not mentioned about the date of the Will, name of the witnesses or the fact that as to whether Will was registered or unregistered in the said reply. Para 11 of the said plaint is reproduced hereinbelow:-

*“11. That the said notice was duly served upon the defendant who through his counsel Sh Mandeep Singh Sachdev Advocate, Jalandhar gave reply dated 15.06.2022 on the basis of absolutely false and frivolous allegations. **In the said reply the***



defendant propounded some alleged will alleged to be executed by said Sh Jatinder Sharma but the defendant intentionally did not got mention in the reply the date of alleged will, name of the witnesses on the alleged will and if the alleged will is registered or unregistered which shows malafides on the part of the defendant. Moreover the copy of the alleged will is intentionally not sent by the defendant along with the reply dated 15.06.2022. Sh Jatinder Sharma died intestate on 30.04.2020 and he never executed any will during his lifetime. The alleged will now propounded by the defendant is a forged and fabricated document created by him to grab the property of the plaintiff and she reserves her right to prosecute the defendant and his associates. Copy of the reply dated 15.06.2022 is attached.”

6. It would be relevant to note that although, the original plaint has not been annexed along with the present revision petition but learned counsel for the petitioner has fairly submitted that abovesaid para 11 was there in the original plaint which is also part of the amended plaint as only para 13A alongwith an additional prayer was added subsequently, by way of amendment.

7. A written statement was filed on behalf of the petitioner-defendant to the said plaint and thereafter, even amended written statement had also been filed to the amended plaint. Although, the original written statement has not been annexed along with the present revision petition but the written statement to the amended plaint has been annexed. Even in the written statement to the amended plaint, it had been averred that Will in question was duly executed by Jatinder Sharma in his sound disposing mind and there were no suspicious circumstances attached to the said Will and it



was stated that the said Will was executed by Jatinder Sharma without any pressure from any source. In para 13A of the written statement to the amended plaint, it was also mentioned that the Will would be proved in due course of time, at the time when the evidence is to be led by the defendant-respondent.

8. It is not in dispute that after the written statement, in which reliance on the Will was placed by the defendant, was filed; the plaint was amended and prayer was also amended and as has been fairly stated by learned counsel for the petitioner that prayer for declaration with respect to the said alleged Will dated 07.01.2020 was also added, as a matter of abundant precaution. In addition to the abovesaid prayer, even para No.13A was also added in the plaint in which it was stated that the defendant had filed written statement in the case on 19.09.2022 in which case he had relied upon the Will allegedly executed by Jatinder Sharma but the defendant intentionally had neither produced the original alleged Will nor even produced the copy of the alleged Will on the judicial file and also had not supplied the copy of the alleged Will to the plaintiff nor had mentioned the date of the execution of the alleged Will and name of the witnesses and as to whether the alleged Will was registered or not, and thus, the plaintiff had to move an application on 17.10.2022 for directing the defendant to produce the original alleged Will on the judicial file and to supply the copy of the same to the plaintiff which was allowed vide order dated 13.12.2022 and it was thereafter, that the defendant had produced the Will dated 07.01.2020 on the judicial file and thereafter the said application for amendment has been moved challenging the said Will. Since, the added prayer for declaration was



also sought, the respondent-plaintiff had filed an application dated 03.05.2024 (Annexure P-4) for placing on record the Court fees of Rs.50/- and in para 4 of the same, it was stated that although the requisite court fee had already been paid but to avoid any technicalities, an additional amount of Rs.50/- was being sought to be paid on account of the prayer for declaration sought. A reply (Annexure P-5) was filed to the said application also.

9. The trial Court, vide impugned order dated 31.05.2024 (Annexure P-1), was pleased to allow the application for placing on record the Court fee of Rs.50/- for declaration sought after observing that the respondent-plaintiff had filed a suit for mandatory injunction directing the defendant to deliver the vacant possession of the first and second floor with respect to the suit property to the plaintiff and since as per the plea raised by the plaintiff, the defendant who was her brother-in-law was a licensee and the licence had been terminated thus, there was no requirement for the plaintiff to file a suit for possession, as per the settled law and only suit for mandatory injunction was required to be filed and the plaintiff was not required to pay advalorem Court fee at the market value thereof and thus, the Court fee of Rs.50/- on account of declaration was adequate and was taken on record. Prayer made by counsel for the plaintiff-respondent to the effect that since petitioner-defendant had propounded the Will dated 07.01.2020 allegedly executed by the husband of the plaintiff, thus, the petitioner should lead evidence first, was accepted after taking into consideration the relevant provisions of the Indian Evidence Act and after observing that a Will must be proved by leading evidence and the burden of proving the execution of the Will is on the propounder who has to prove the same affirmatively and then



only it shifts upon the person who is opposing the Will and it is the propounder of the Will who has to establish that the testator at the time of execution of the Will was in sound state of mind and body and merely because the plaintiff says that the Will is forged and fabricated, it does not mean that the plaintiff is first required to lead evidence on the said aspect and that since the defendant had set up a Will thus, onus of proving the execution of the Will was on the defendant and, therefore, the defendant must lead evidence first.

10. The said observations of the trial Court are absolutely in accordance with law. It is a matter of settled law that the person who propounds a Will is required to prove due execution of the same in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872 and is also required to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. It is only after the said aspects are proved that the next question would arise which would be as to whether there is any evidence on the aspect of forgery/fabrication, which aspect would have to be proved by the person alleging forgery and fabrication, which in the present case would be the plaintiff. In case, the defendant is not able to prove the due execution of the Will then even in the absence of proof of any forgery and fabrication, it would not be possible for the person propounding the Will to seek any benefit on the basis of the Will. In the present case, it would also be relevant to note that a perusal of the entire amended plaint would show that it is only in response to the legal notice issued on behalf of the plaintiff that the defendant had disclosed about there being some Will without giving details of the date or the fact as to whether the said Will was a registered or an



unregistered Will and it is only after the application was filed by the plaintiff to produce on record the original Will, which was allowed on 13.12.2022, that the alleged Will dated 07.01.2020 was produced and it is on the said count that the amendment was made. Even in the plaint, specific pleadings were made with respect to the Will as “alleged to be executed” and sought to be “propounded” by the defendant and thus, a perusal of the plaint would show that the Will has not been admitted by the plaintiff and as a matter of abundant precaution, the same has been challenged. Thus, the impugned order passed is in accordance with law and deserves to be upheld.

11. The judgment of the Hon’ble Supreme Court in the case of ***Daulat Ram*** (Supra) relied upon by the counsel for the petitioner does not in any way further the case of the petitioner. In the said case, the appellant before the Hon’ble Supreme Court had challenged the Will on the ground that the same was forged and was surrounded by suspicious circumstances. The Hon’ble Supreme Court in para 10 of the judgment, had observed that Will is to be proved in accordance with Section 68 of the Indian Evidence Act, 1872 and for the said purpose, one of the attesting witnesses has to be examined if the attesting witness is alive and subject to the process of the Court and also propounder has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925 to show that the Will has been validly executed and is a genuine document and further has to show that the Will has been signed by the testator out of his own free Will and he was at the relevant time in a sound disposing state of mind and once these elements are established, then onus which rests on the propounder would be discharged. It was also observed that the propounder has also to explain the suspicious



circumstances by leading appropriate evidence. It was further observed by the Hon'ble Supreme Court that respondent No.1 therein had successfully discharged the onus of proving the due execution of the Will by examining the attesting witnesses and by giving positive evidence and had also explained the suspicious circumstances and had thereafter observed that there was no evidence led by the appellant with respect to there being any fraud or forgery. In the said circumstances, the order was upheld. Paras 10, 11, 13 and 14 of the said judgment are reproduced hereinbelow:-

"1 to 9. xxx xxx

10. Will being a document has to be proved by primary evidence except where the Court permits a document to be proved by leading secondary evidence. Since it is required to be attested, as provided in [Section 68](#) of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. In addition, it has to satisfy the requirements of [Section 63](#) of the Indian Succession Act, 1925. In order to assess as to whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the will was



forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so.

11. Respondent No. 1 has successfully discharged the onus of proving the due execution of the Will. The two attesting witnesses, PW-3 and PW-5, have clearly stated in their depositions that Prati was in sound disposing mind at the time of the execution of the Will and had put his thumb mark on the said Will after the same was read over to him in their presence and that they had signed the Will in the presence of the testator and in the presence of each other. They have deposed that Respondent No. 1 was the daughter of Prati and Prati of his own volition had executed the Will in favour of Respondent No. 1. PW-5 is a former Member of Legislative Assembly. PW-3 is a close relation of deceased Prati. There is nothing on record to indicate that they have deposed falsely. Rather their testimonies inspire confidence. PW-2 is the scribe of the Will and neighbour of deceased Prati. He has also deposed that Respondent No. 1 is the daughter of Prati and that he had scribed the Will at the instance of Prati. He has also deposed that Prati had executed the will of his own while in sound disposing state of mind. The Will propounded by the appellants has been specifically revoked/cancelled by the Prati in his later Will stating therein that the earlier Will was got written from him forcibly by the appellants. Assertion in the second Will by the testator about the earlier Will having been forcibly got executed from him by the appellants is corroborated by the fact that in the earlier Will it was shown that the testator had no child or heir except the appellants and the fact of presence of Respondent No. 1, daughter of testator, was suppressed. From the reading of the first Will it is clear that appellants were aware that Prati had a daughter who could at any time lay her claim to the property of her father.

12. xxx xxx



13. The burden to prove that the Will dated 8.5.1993 executed by Prati in favour of his daughter was forged or was obtained by undue influence or by playing a fraud was on the appellants which they have failed to discharge. No evidence was led by them on either of these points.

14. Be that as it may, the second Will executed by Prati has been proved to be genuine and validly executed by him wherein he has bequeathed his entire property to his daughter, Respondent No. 1. The earlier Will executed in favour of the appellants has been specifically revoked. Since the earlier Will stands revoked it cannot be given effect to.

Xxx xxx”

12. The abovesaid judgment in fact reiterates the settled proposition of law that the Court is first required to see that the propounder of the Will has been able to prove its due execution. Thus, the trial Court has rightly directed the petitioner-defendant to lead his evidence first. Even on the aspect of Court fee, the finding of the trial Court is correct and thus, the impugned order dated 31.05.2024 (Annexure P-1) passed by the trial Court deserves to be upheld. The present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

13. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

20.09.2024

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No