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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of Decision: 26.02.2024.

Gurdial Chand @ Bittu ...Petitioner.
Versus
Sheela and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Ishan Gupta, Advocate for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 10.10.2023 (Annexure P-1) passed by learned trial Court, vide which application filed by defendant No.2 for leading secondary evidence to prove the unregistered Will dated 21.02.2010, has been dismissed.

2. The brief facts relevant for the adjudication of the present revision petition are that the plaintiff filed a suit for declaration that she is owner in possession of 1/7 share in the suit property, the suit property being an ancestral property and sale deed No.2222 dated 09.12.2015, sale deed No.2042 dated 02.12.2015 and sale deed No.1797 dated 23.11.2015 were illegal, null and void and have no effect upon the rights of the plaintiff. The relief of permanent injunction was also sought for restraining the defendants from selling, mortgaging or alienating any part of the said property. Notice of this suit was issued to the defendants, who filed their written statement

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denying the claim of the plaintiff. Then the issues were framed after perusing pleadings of the parties and case was posted for adducing evidence of the plaintiff. The plaintiff concluded his evidence on 24.11.2022 and then the case was fixed for defendants' evidence. Various opportunities were afforded to the defendants for adducing their evidence. On 06.10.2023, defendant No.2 filed an application to lead secondary evidence to prove the unregistered Will dated 21.02.2010 allegedly executed by Smt. Sundari Bai wife of Radhe Sham. Reply to the said application was filed and the said application was dismissed vide order dated 10.10.2023. Hence the petitioner knocked the doors of this Court by way of filing the present revision petition.

4. Learned counsel for the petitioner has contended that the trial Court has wrongly reflected in the impugned order that 17 effective opportunities were given to the defendants to conclude their entire evidence and the adjournment which were not at the instance of the defendants were also included in those alleged 17 opportunities. He has contended that the application for the secondary evidence has been dismissed wholly on the technical grounds and the impugned order has been passed illegally, arbitrarily and it has not been disclosed that how the application for secondary evidence was to be dismissed in view of the settled proposition of law. He has argued that Section 65 of the Indian Evidence Act (for short, 'the Act') deals with adducing of the secondary evidence and explains the circumstances under which secondary evidence can be adduced. He has submitted that secondary evidence is not a matter of essential pleading and if any of the circumstances contemplated under Section 65 of the Act are

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complied with, then Court is to rely upon the secondary evidence and if the Court finds that circumstances providing for secondary evidence are not satisfied, the Court shall be at liberty to eschew secondary evidence and has prayed that the impugned order be set aside.

5. I have heard learned counsel for the petitioner and have gone through the relevant record.

6. The perusal of the impugned order reveals that the defendants failed to conclude their entire evidence, despite availing 17 effective opportunities and when the last opportunity had been granted to the defendants to conclude their entire evidence, then this application for adducing the secondary evidence was filed. It has also been observed therein that the said application has been moved for the purpose of delaying the proceedings of this case and it may also amount to denovo trial. When the said Will was within the knowledge of defendant No.1, even at the time of filing of the written statement, then this application has been moved at the fag end of the case just to delay the proceedings of the case by hook or crook and with these observations by the trial Court the application for leading of secondary evidence to prove the unregistered Will dated 21.02.2010 was dismissed.

7. Though there is no infirmity in the impugned order regarding closing by order the evidence of defendants, yet it will be appropriate, if in the interest of justice, one effective opportunity is given to the defendants to conclude their evidence. The other party can be well compensated with costs. The trial Court is directed to grant one effective opportunity to the defendants to conclude their entire evidence at own responsibility, subject to

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payment of costs of Rs.15,000/- to be paid to the petitioner.

8. From the impugned order, it transpires that the application for the secondary evidence has been dismissed by the trial Court primarily on the ground that it has been filed at the fag end of the case. While considering this application, the judicial mind has not been applied by the trial Court that whether the circumstances as contemplated under Section 65 of the Act for allowing the secondary evidence are satisfied or not. If the defendants have not concluded their evidence, despite availing multiple opportunities, then this cannot be the ground for dismissing the application for leading the secondary evidence, without considering that whether the circumstances as enumerated under Section 65 of the Act are there or not. So the impugned order is set aside. The trial Court is directed to dispose of the application for adducing the secondary evidence moved by the defendants in light of the provisions of Section 65 of the Act.

9. Thus, the present revision petition being bereft of any merits stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

11. A copy of this order, attested by the Reader of this Court, be handed over to counsel for the petitioner.

(SUKHVINDER KAUR)
JUDGE

26.02.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No