

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-5433-2023 (O&M)****Date of Decision : 11.09.2025**

Suresh and Others

... Petitioners

Versus

Hari Dutt (deceased) through LR's and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhishek Vashista, Advocate for the petitioners.

Mr. Ravi Dutt Sharma, Advocate for respondent No.1.

Service of respondent Nos.2 to 36 dispensed with
vide order dated 21.01.2025.**ALKA SARIN, J. (Oral)****CM-17021-CII-2023**

1. For the reasons stated in the application, the same is allowed. The delay of 24 days in filing the present revision petition is condoned.

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2. Present revision petition has been filed challenging the order dated 20.05.2023 passed by the Additional Civil Judge (Senior Division), Kaithal whereby the application filed by the petitioners for leading additional evidence has been dismissed.

3. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for declaration and possession. In the written statement, defendant Nos.1 to 6 i.e. petitioners and proforma

respondent No.2 herein set up a Will dated 28.04.2014 alleged to have been executed by Smt. Bharpai in favour of defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein). An issue qua the same being issue No.4 was framed, the onus of which was cast upon defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein). Issue No.4 reads as under :

“4. Whether Smt. Bharpai executed Will dated 28.04.2014 in favour of defendants No.1 to 6 in sound disposing state of mind ? OPD 1 to 6”

4. After the evidence of the defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein) had been closed, the present application was moved for leading additional evidence on 22.11.2022 seeking to produce affidavits of the attesting witnesses, publication record regarding sanctioning of mutation No.1642 relating to village Dhunda and the orders passed by Assistant Collector 1st Grade concerned. The said application was dismissed vide order dated 20.05.2023. Aggrieved by the same, the present revision petition has been filed.

5. Learned counsel for the petitioners would contend that the petitioners had inadvertently not led the evidence hence now by way of additional evidence they wish to produce the affidavits of the attesting witnesses, publication record regarding sanctioning of mutation No.1642 relating to village Dhunda and the orders passed by Assistant Collector 1st Grade concerned. Hence, the application ought to have been allowed, and additional evidence ought to have been permitted by the Trial Court under Section 151 CPC.

6. *Per contra* learned counsel for the plaintiff-respondent No.1 would contend that the defendants availed more than 25 effective

opportunities for leading their evidence including secondary evidence however, they failed to examine the said witnesses and now have filed the present application for additional evidence. Hence, no fault can be found with the order passed by the Trial Court.

7. Heard.

8. In the present case, defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein) set up a Will dated 28.04.2014 alleged to have been executed by Smt. Bharpai. A specific issue was framed being issue No.4 the onus of which was cast upon defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein). Once the onus of the issue was cast upon defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein), they were to lead their evidence in the affirmative to prove the execution of the Will dated 28.04.2014. Having failed to do so, defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein) filed the present application for additional evidence. A copy of the application has been supplied in Court today by learned counsel for the plaintiff-respondent No.1 as it was not appended with the present revision petition. A perusal of the same reveals that there is not a whisper in the application as to why the said evidence could not be produced earlier. It has simply been stated that the applicants wish to produce the affidavits of the attesting witnesses, publication record qua sanctioning of mutation No.1642 relating to village Dhunda and the orders passed by Assistant Collector 1st Grade concerned.

9. After deletion of Order XVIII Rule 17A CPC by the Code of Civil Procedure (Amendment Act, 1999) (46 of 1999) w.e.f. 01.07.2002, the amended provisions of the Code contemplate and expect a Trial Court to hear the arguments immediately after the completion of evidence and then proceed

to deliver the judgment. Hon'ble Supreme Court in the case of **K.K. Velusamy Vs. N. Palanisamy [2011 (11) SCC 275]** has considered the fact of deletion of Order XVIII Rule 17A and observed that power under Section 151 CPC will have to be used with circumspection and care only where it is absolutely necessary, when there is no provision in the Code governing the nature, when bonafides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent the abuse of process of Court. Their Lordships summarized the scope of Section 151 CPC as follows:

“10. The respondent contended that section 151 cannot be used for re- opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra vs. Seth Hiralal - AIR 1962 SC 527; Arjun Singh vs. Mohindra Kumar - AIR 1964 SC 993; Ram Chand and Sons Sugar Mills (P) Ltd. vs. Kanhay Lal - AIR 1966 SC 1899; Nain Singh vs. Koonwarjee - 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. vs. Union of India - AIR 1976 SC 1152; Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, New Delhi - AIR 1977 SC 1348; National Institute of Mental Health & Neuro Sciences vs. C Parameshwara - 2005 (2) SCC 256; and

Vinod Seth vs. Devinder Bajaj - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such

provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

11 to 15 xx xx xx

16. *We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering*

prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

10. In the present case, the evidence was to be led in the affirmative to prove the Will on issue No.4 the onus of which was cast upon defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein). Defendant Nos.1 to 6 (petitioners and proforma respondent No.2 herein) had an opportunity to produce the evidence sought to be produced by them by way of evidence in the affirmative however, despite 25 opportunities failed to lead the same. Evidence which was to be led in the affirmative cannot be allowed to be led as additional evidence especially when the petitioners have not even stated a single reason for not producing the same earlier.

11. In view of the above, there is no illegality or irregularity in the impugned order. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.09.2025
jk

(ALKA SARIN)
JUDGE

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