

**CR-6368-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(124)****CR-6368-2024****Date of decision: - 30.01.2025****Mohan Singh (since deceased) through his LR****....Petitioner****Versus****Gurdeep Singh and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Inderpal Singh Parmar, Advocate,
for the petitioner.

**********VIKAS BAHL, J. (ORAL)**

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 13.09.2024 passed by the Civil Judge (Junior Division), Ludhiana, in CS/3136/2017, whereby the application dated 12.08.2024 (Annexure P-8) filed by the petitioner/defendant No.1 for discarding the affidavit dated 05.08.2024 (Annexure P-7) filed by plaintiff/respondent No.1 in his rebuttal evidence has been declined.

2. Learner counsel for the petitioner has submitted that the Will dated 29.06.2000 was in the knowledge of respondent No.1/plaintiff as he had filed a suit for declaration to the effect that the said Will was forged and fabricated and thus, the respondent No.1/plaintiff should have led the



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evidence in affirmative and should not have been permitted to lead evidence in rebuttal. It is submitted that in view of the same, the affidavit of respondent No.1/plaintiff, which has been placed on record in rebuttal evidence, was required to be discarded and the application filed by the petitioner for discarding the same was required to be allowed and the impugned order is thus required to be set aside.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the impugned order has been rightly passed and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

4. It is not in dispute that the present petitioner/defendant No.1 is claiming his right on the basis of the Will dated 29.06.2000, which is stated to have been executed by Randhir Singh in his favour. It is also not in dispute that on 23.07.2019, the following issues were framed: -

1. *Whether plaintiff is entitled for decree of declaration as prayed for? OPP*
2. *Whether plaintiff is entitled for decree of permanent injunction as prayed for?OPP*
3. *Whether plaintiff is entitled for decree of separate possession by way of partition as prayed for?OPP*
4. *Whether plaintiff is entitled for decree of rendition of account as prayed for?OPD*
5. *Whether suit of the plaintiff is not maintainable?OPD*
6. *Whether plaintiff has no locus standi to file the present suit?OPD*
7. *Whether plaintiff is estopped from his own act and conduct from filing the present suit?OPD*
8. *Whether plaintiff has no cause of action to file the present suit?OPD*
9. *Whether suit of the plaintiff is barred under order 2 rule 2 CP? OPD*
10. *Relief."*



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5. On 10.05.2023, additional issue No.4(a) was framed, which is as under:-

“Whether Randhir Singh has executed Will dated 29.06.2000 in favour of defendant no.1?OPD”

6. A perusal of the abovesaid issues, more so, additional issue No.4(a) would show that the onus of proving the Will dated 29.06.2000 is on the defendant No.1 and it is the case of the petitioner/defendant No.1 that thereafter he had led his evidence. Once the onus of proving the said Will was on the defendant No.1/petitioner, the plaintiff/respondent No.1 had every right to lead his rebuttal evidence to rebut the evidence led by the petitioner/defendant No.1. Thus, the affidavit produced by the plaintiff/respondent No.1 in rebuttal has been rightly produced and no ground is made out to discard the same.

7. The trial Court while dismissing the said application vide order dated 13.09.2024 had referred to the judgment of this Court in the case of “Smt. Kanwaljit Kaur Bedi Vs Paramajit Singh Sawhney and others”, (2020)(1) R.C.R. (Civil) 521 (P&H), the relevant portion of which was reproduced in the impugned order and wherein it was observed that even in case the factum of Will was in the knowledge of the plaintiff from the very beginning, still the plaintiff was not supposed to lead evidence in negative to prove that the Will was not genuine and it is only after the evidence has been led by the defendants in terms of execution of Will, the plaintiff would lead evidence to show that the Will is not genuine and for the said purpose, the plaintiff is entitled to lead evidence



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in rebuttal. The said observations of the learned Single Judge, as reproduced in the impugned order, have not been disputed before this Court.

8. This Court while examining CR-5453-2024 titled as **“Ramesh Lakhanpal vs. Neetu Sharma”** decided on 20.09.2024, had dealt with the issue as to which party was to first lead the evidence in the case of the parties propounding a Will, and had observed as under:-

“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..

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



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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”

9. From perusal of the above said judgment, it is apparent that firstly, the propounder of the Will has to prove the execution of the Will and then the next question would arise as to whether the said Will is forged or fabricated, which aspect has to be proved by the person alleging forgery/fabrication/non-signatures. In the present case, once the defendants had led their entire evidence to prove the execution of the Will, the onus of which was on the defendant No.1, then, it was the right of the respondent No.1/plaintiff to rebut the said evidence by leading rebuttal evidence.

10. Keeping in view the above-said facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

January 30, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes