

2026:PHHC:015092



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2052-2025 (O&M)

Date of Decision: 02.02.2026

Vivek Kumar

....Petitioner

Versus

Mohan Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Akhilesh Vyas, Advocate, for the petitioner.

Mr. V.K. Sandhir, Advocate, for the respondent.

VIKRAM AGGARWAL, J.

The instant petition, filed under Article 227 of the Constitution of India, assails the order dated 20.01.2025 (Annexure P.6), passed by the Civil Judge (Junior Division), Amritsar, vide which the application moved by the petitioner-plaintiff under Section 100 of the Indian Evidence Act, 1872 (for short 'the Evidence Act') was dismissed.

2. A suit for partition by metes and bounds and for separate possession of $\frac{1}{2}$ share of the house (fully described in the plaint) situated at Majitha Road, Amritsar (hereinafter referred to as 'the suit property'), was instituted by the petitioner-plaintiff against the respondent-defendant. Consequential relief of permanent injunction, restraining the respondent-defendant from letting out; selling; transferring; gifting or alienating the suit property in excess of $\frac{1}{2}$ share of the

respondent-defendant, was also claimed. In the plaint, reliance was placed upon the Will dated 19.06.2008, by way of which 50% share in the suit property, had been bequeathed in favour of the plaintiff.

3. Written statement (Annexure P.3) was filed, in which apart from other averments, execution of the Will dated 19.06.2008, was admitted, but it was averred that subsequently, a registered Will dated 26.09.2011 had been executed by Hira Lal in favour of the respondent-defendant with respect to the suit property and in the said Will, the previous Will had been cancelled by said Hira Lal.

4. On the basis of the pleadings of the parties, the following issues were framed by the trial Court:-

“1. Whether the plaintiff is entitled to suit for partition by metes and bounds, as prayed for? OPP

2. Whether the plaintiff is entitled to relief for permanent injunction, as prayed for? OPP

3. Whether the suit is not legally maintainable? OPD

4. Whether the plaintiff is guilty of suppressing the material facts from the court? OPD

5. Whether the plaintiff has got no locus standi and cause of action to file the present suit? OPD

6. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD

7. Relief.”

5. An application under Section 100 of the Evidence Act (Annexure P.4) was instituted by the petitioner-plaintiff with a

prayer that since it was the categoric case of the respondent-defendant that Hira Lal, father of the parties, had expired on 19.11.2020 and had executed a Will dated 19.06.2008, which as per the respondent-defendant had been cancelled and a Will dated 26.09.2011, had been executed in favour of the respondent-defendant, the respondent-defendant be called upon to lead evidence before the petitioner-plaintiff, as onus to prove the said Will would be on the respondent-defendant. The said application was opposed by way of a reply (Annexure P.5).

6. By way of the impugned order, the said application was dismissed by the trial Court, leading to the filing of the instant revision petition.

7. I have heard learned counsel for the parties.

8. Learned counsel for the petitioner submits that the trial Court erred in dismissing the application. He submits that since the execution of the Will dated 19.06.2008, had been admitted by the respondent-defendant and he had pleaded cancellation of the same on the basis of execution of a registered Will dated 26.09.2011, the onus to prove the same would be upon the respondent-defendant. He submits that under the circumstances, the application ought to have been allowed.

9. *Per contra*, learned counsel representing the respondent-defendant submits that there is no illegality in the impugned order. He submits that it is a suit for partition and consequential relief of permanent injunction, which has to be proved by the plaintiff by way of leading his own evidence,

whereafter, the defendant-respondent would lead his evidence. He submits that in any case, no issue was framed as regards the execution of the Will dated 19.06.2008, its cancellation and execution of the Will dated 26.09.2011. He, thus, submits that under the circumstances, no illegality was committed by the trial Court, in dismissing the application filed by the petitioner-petitioner.

10. I have considered the submissions made by learned counsel for the parties.

11. Concededly, the suit filed by the plaintiff is a suit for partition and in normal course, it would be for the plaintiff to prove his own case by leading evidence. No doubt, the respondent-defendant had claimed that the suit property was willed in his favour by Hira Lal, by way of a registered Will dated 26.09.2011, but no issue in this regard was framed by the trial Court. The proper course, in the circumstances, was to move an appropriate application for framing of an additional issue(s), which, if so filed, would have been decided, in accordance with law.

12. Be that as it may, in the considered opinion of this Court, there was no occasion for the trial Court to call upon the respondent-defendant to lead evidence to prove execution of the Will dated 26.09.2011, especially keeping in view the issues framed by the trial Court.

13. That being so, the instant petition is found to be devoid of merit and the same is accordingly dismissed.

14. Needless to assert that in case an appropriate application for framing of an additional issue(s) etc., is moved by either side, the same shall be decided, in accordance with law.

(VIKRAM AGGARWAL)
JUDGE

02.02.2026

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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No