

Devinder Pal Singh Rana vs Bhupinder Kaur Babbar And Ors on 19 December, 2024

Author: Vikas Bahl

Bench: Vikas Bahl

Neutral Citation No:=2024:PHHC:170735

CR-7438-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(121)

CR-7438-2024

Date of decision: - 19.12.2024

Devinder Pal Singh Rana

....Petitioner

Versus

Bhupinder Kaur Babbar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Namit Guatam, 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 impugned order dated 21.11.2024 (Annexure P-11) passed by the Civil Judge (Junior Division), Ludhiana, whereby the application (Annexure P-9) filed by defendants No.1 and 2/petitioner and proforma respondent No.2 for reframing/correction of issues has been dismissed.

2. Learned counsel for the petitioner has submitted that respondent No.1 had filed a suit dated 09.08.2010 (Annexure P-1) for declaration that the Will dated 28.01.2002 allegedly scribed by late

S. Iqbal Singh Rana, father of the plaintiff, and defendants No.2, 3 and 4 and husband of defendant No.1 was forged, fabricated and had no effect upon 1 of 8 Neutral Citation No:=2024:PHHC:170735 the rights of the plaintiff with respect to the estate of S. Iqbal Singh Rana. It is submitted that respondent No.1-plaintiff had sought amendment of the plaint and even in the amended plaint dated 08.12.2016 (Annexure P-6), only amendment which was sought was with respect to the addition of a prayer for partition and separate possession, whereas, the plea with respect to the Will being forged and fabricated was the same. It is further submitted that initially, vide order dated 20.01.2011 issues were framed and Issue No.5, which is relevant for consideration, was framed in the following manner: -

"5. Whether the Will dated 28/01/2002 of Iqbal Singh Rana is forged and fabricated?
OPP"

3. It is stated that after the amendment had been allowed, the Court had reframed the issues on 07.09.2024 and with respect to the Will, Issue No.5 was reframed as Issue No.7, which is as under: -

"7. Whether the Will dated 28/01/2002 of Iqbal Singh Rana is genuine? OPD"

4. Learned counsel for the petitioner has submitted that initially the onus of proving the forgery of the Will was on the plaintiff and thereafter, the onus of proving the Will to be genuine had been put on the defendants, which has caused great prejudice to the petitioner. It is further submitted that for the said purpose, the petitioner had moved an application for reframing/correction of issues on 17.09.2024 and the said application has been dismissed by the impugned order. It is argued that the said application is meritorious and the impugned order deserves to be set aside, inasmuch as, the onus of proving the Will to be genuine has 2 of 8 Neutral Citation No:=2024:PHHC:170735 been wrongly put on the petitioner and the material issue as per the present case, on the basis of the pleadings, was as to whether the Will is forged and fabricated and the onus of the same was on the plaintiff. It is further argued that the evidence of the plaintiff has been completed and the case is now fixed for the evidence of the defendant and by virtue of shifting the onus of the Will on the petitioner, the plaintiff has been given an opportunity to lead rebuttal evidence. It is submitted that the impugned order be set aside and the present revision petition be allowed.

5. This Court has heard learned counsel for the petitioner and has perused the paper-book and is of the opinion that the impugned order dated 21.11.2024 passed by the Civil Judge (Junior Division), Ludhiana is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

6. In the original plaint, which was filed on 09.08.2010, the primary plea raised by the plaintiff for claiming the estate of S. Iqbal Singh Rana was that she was the daughter of the said S. Iqbal Singh Rana and that defendants No.2, 3 and 4 were the other legal heirs of the said S. Iqbal Singh Rana. It was also averred that the properties were ancestral properties and that after the death of S. Iqbal Singh Rana when the plaintiff had approached defendants No.1 and 2 and had demanded a share in the ancestral properties and the business run by her father, the defendants refused and produced a copy of the Will dated 28.01.2002 and handed over the same to the plaintiff and when the plaintiff

demanding the 3 of 8 Neutral Citation No:=2024:PHHC:170735 original Will, the defendants refused to give the same. It is in the said background, the plea of the Will being forged and fabricated was raised. The claim made on the suit property was on the basis of succession and the property being ancestral.

7. In the written statement filed on behalf of the petitioner, who is defendant No.2, as well as on behalf of defendant No.1, it was pleaded that the Will dated 28.01.2002 was executed by late S. Iqbal Singh Rana and the same was a valid Will and thus, by placing reliance upon the said Will, the suit was opposed. The pleading in the amended plaint (Annexure P-6) as well as in the amended written statement (Annexure P-7) was to a similar effect with the only addition that an additional prayer for suit for partition and separate possession was also made.

8. From the above-said pleadings, it is apparent that it is the petitioner who is relying upon the Will and thus, as a matter of settled law, it was incumbent upon the trial Court to have framed an issue to the effect that "Whether the Will dated 28/01/2002 of Iqbal Singh Rana is genuine? OPD". However, surprisingly the said issue was not initially framed, rather, the issue only on the aspect of forgery of the Will was framed.

9. It is a matter of settled law that the person who propounds a Will is required to prove the due execution of the same in accordance with the provisions of the Indian Evidence Act, 1872 (presently as per the provisions of Bharatiya Sakshya Adhiniyam, 2023) and is also required to satisfy the requirements of Section 63 of the Indian Succession Act, 1925.

4 of 8 Neutral Citation No:=2024:PHHC:170735 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.

10. The amended issues which have been reframed on 07.09.2024 are as under: -

"2. After the amendment, in which the relief of partition by way of separate possession was added, the court reframed the following issues on 07/09/2024:

1. Whether the plaintiff is entitled to declaration as prayed for?

OPP

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

3. Whether the plaintiff is entitled to the separate possession of the properties by way of partition as prayed for? OPP

4. Whether suit properties are ancestral properties and the plaintiff has 1/5th share therein? OPP

5. Whether the suit of the plaintiff is legally maintainable? OPP

6. Whether there is joint family coparcenary between the plaintiff and the defendants? OPP

7. Whether the Will dated 28/01/2002 of Iqbal Singh Rana is genuine? OPD

8. Whether the suit of the plaintiff is barred under law? OPD

9. Relief."

11. The petitioner had filed an application for 5 of 8 Neutral Citation No:=2024:PHHC:170735 reframing/correction of issues on 17.09.2024 (Annexure P-9) and the said application was opposed by the plaintiff vide reply dated 14.10.2024 (Annexure P-10) and in the said reply, it was stated that it is a settled law that the Will is to be proved by the beneficiary who is claiming it to be in his favour and thus, Issue No.7 which had been framed on 07.09.2024 was in accordance with law. The trial Court vide order dated 21.11.2024 (Annexure P-11) had dismissed the application filed by the petitioner after reiterating the principle of law that initial onus to prove the Will is on the propounder and it is only once the said onus is discharged that the question of the Will being forged and fabricated would arise. It was observed that Issue No.7 regarding the genuineness of the Will was to be proved by the defendants as it was the defendants who had relied upon the Will and on the aspect of the Will being forged, the same was covered under Issue No.1. While dismissing the said application, reliance was also placed 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, the relevant portion of which is as under: -

"xxx 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."

12. Thus, in the said circumstances, the issues which have been framed on 07.09.2024 are in accordance with law and deserve to be upheld.

13. It is not in dispute that the plaintiff evidence has been completed and the case is now fixed for the evidence of the defendant and thus, the defendant still has an opportunity to lead evidence in support of the issue with respect to genuineness of the Will which in any case the petitioner was aware as it was him who was relying upon the Will to claim the suit property. The suit is of the year 2010 and any further indulgence by this Court in the present matter would result in delay of the proceedings. By virtue of the issues framed on 07.09.2024, the mistake earlier committed in framing the issues, has been rectified and the said issues have been rightly framed on 07.09.2024 and would further the cause of proper adjudication of the case.

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14. Keeping in view the above-said facts and circumstances, the impugned order dated 22.11.2024 (Annexure P-11) passed by the Civil Judge (Junior Division), Ludhiana is upheld and the revision petition filed by the petitioner being meritless, deserves to be dismissed and is accordingly dismissed.

December 19, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes