
(2013) 09 P&H CK 0432

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 7004 of 2012

Rajwant Kaur and Others

APPELLANT

Vs

Davinder Singh and Others

RESPONDENT

Date of Decision: Sept. 10, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: V.K. Sandhir, for the Appellant; B.B.S. Sobti, Advocate for Respondents No. 1, 3 and 5, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Defendants have filed this petition under Article 227 of the Constitution of India impugning order dated 17.10.20012 Annexure P/9 passed by the trial court thereby dismissing application Annexure P/8 filed by the defendants for discarding the evidence of Balbir Singh, Registration Clerk PW5, Bachittar Singh, Advocate PW6 and Mohinder Pal Singh Baga, Petition Writer PW7 who have been examined-in-chief by the respondents (legal representatives-LRs of original plaintiff Kartar Kaur since deceased). Kartar Kaur filed suit vide plaint Annexure P/1 thereby challenging gift deed dated 18.4.2006 allegedly executed by plaintiff in favour of defendants no. 2 and 3 being null and void and result of fraud etc. and also challenging "tabdil malkiat" document dated 17.5.2006 being null and void and result of fraud etc.

2. The defendants alleged in their application Annexure P/8 that inheritance of estate of Kartar Kaur is not in issue in the suit and therefore, the plaintiffs have no right to lead evidence regard alleged Will dated 5.11.1990 and revocation-cum-Will dated 28.8.2006 which have also not been pleaded and therefore, the aforesaid three witnesses relating to the said Wills could not be examined and some earlier

evidence led by the plaintiff also being irrelevant and inadmissible on the same ground is liable to be discarded. The trial court has dismissed the aforesaid application vide order Annexure P/9 which is under challenge in this revision petition.

3. I have heard counsel for the parties and perused the case file.

4. Counsel for the petitioners vehemently and repeatedly contended that the Wills dated 5.11.1990 and 28.8.2006 have not been pleaded in the plaint and inheritance of Kartar Kaur original plaintiff since deceased is also not in issue in the suit and therefore, evidence relating to the said Wills led by respondents (LRs of plaintiff) is irrelevant and inadmissible. Reliance has been placed on judgment of Hon'ble Supreme Court in [Kalyan Singh Chouhan Vs. C.P. Joshi](#),

5. On the other hand, counsel for the contesting respondents contended that the Wills in question executed by Kartar Kaur are being produced not for proving inheritance of her estate but for proving the averments made in the plaint relating to invalidity of the gift deed and "tabdil malkiat" document which are under challenge in the suit because averments made in the plaint have also been reiterated by the plaintiff in revocation-cum-Will dated 28.8.2006.

6. I have carefully considered the matter. There is considerable merit in contention raised by counsel for the contesting respondents which had also been accepted by the trial court. The Wills in question are not being proved to for the purpose of inheritance of estate of Kartar Kaur. On the other hand, the Wills in question are being proved to corroborate the averments made in the plaint regarding invalidity of the gift deed and "tabdil malkiat" document which are under challenge in the suit. It has been observed by the trial court in the impugned order that averments made in the plaint also find mention in revocation-cum-Will dated 28.8.2006. Since plaintiff herself is not available having died, recitals made by her in her said Wills are sought to be proved to corroborate the averments made in the plaint. In these circumstances, evidence being led by the respondents relating to aforesaid Wills cannot be said to be irrelevant or inadmissible, notwithstanding that the said Wills have not been pleaded in the plaint. The said Wills are being proved as evidence to corroborate the averments already made in the plaint. In these circumstances, judgment in the case of Kalyana Singh Chouhan (supra) cited by counsel for the petitioners is not attracted to the facts of the instant case.

7. It may also be added that respondent no. 5 Gurdeep Kaur while appearing as PW2 also stated about the aforesaid Wills and similarly Dharam Singh marginal witness of Will dated 28.8.2006 was also examined to prove the said Will and both these witnesses had already been cross-examined at length without any objection, before filing of application Annexure P/8. For the reasons aforesaid, I find that application Annexure P/8 filed by the defendants has been rightly dismissed by the trial court. There is no perversity, illegality or jurisdictional error in impugned order of the trial

court so as to call for interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition is meritless and is accordingly dismissed.