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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(204)

CR-1194-2023 (O&M)

Date of decision: - 21.08.2025

Maninder Pal Singh and others

....Petitioners

Versus

Jasmeet Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Amit Jhanji, Senior Advocate
for Mr. Arjun Singh, Advocate
for the petitioners.

Mr. Anish Setia, Advocate,
Mr. Surinder Singh, Advocate, and
Mr. Karan Diwan, Advocate
for respondents No.1 to 4.

Mr. Nimanyu Gautam, Advocate
for respondent No.6.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present revision petition is to the order dated 23.11.2022 (Annexure P-1) passed by the Civil Judge (Jr. Division), Jalandhar in Civil Suit No.CS/311/2015 titled as “Jasmeet Singh and others Vs. Maninder Pal Singh and others”, to the limited extent whereby a specific direction has been issued to the petitioners, who are defendants No.1 to 4 , to record their evidence first qua the Will in question.

ARGUMENTS ON BEHALF OF THE PETITIONERS

2. It is argued on behalf of the petitioners that the petitioners



are defendants No.1 to 4 in the suit and thus, it was the duty of the plaintiffs to lead evidence first and the present petitioners cannot be asked to lead evidence prior to the evidence of the plaintiffs. It is submitted that it is a matter of settled law that the plaintiffs have to first lead evidence and it is only after the evidence has been led by the plaintiffs that the defendants would lead evidence to rebut the evidence led by the plaintiffs. It is thus prayed that the present revision petition be allowed and the impugned order dated 23.11.2022 to the said extent be set aside and the plaintiffs/respondents No.1 to 4 be directed to lead their evidence first.

ARGUMENTS ON BEHALF OF RESPONDENT NOS.1 TO 4

3. On the other hand, learned counsel for respondents No.1 to 4/plaintiffs has submitted that in the present case, vide order dated 18.01.2021, issue with respect to Will which was propounded by the petitioners/defendants No.1 to 4 was framed and the onus of the same was put on the petitioners/defendants No.1 to 4. It is further submitted that in the said order dated 18.01.2021 (Annexure P-5), it was specifically directed that the present petitioners would lead their evidence first qua the Will and that the said order has not been challenged and thus, the present petitioners are estopped from challenging the subsequent order dated 23.11.2022 on the principle of constructive res judicata. It has further been fairly stated that the petitioners had sought recalling of the order dated 18.01.2021 and the trial Court had dismissed the said application vide order dated 29.10.2021, however inadvertently, in the last line of para 7, it was stated that the case is now to come up for PWs. It is



submitted that against the said direction, an application was filed by respondents No.1 to 4/plaintiffs seeking clarification and the trial Court vide order dated 15.09.2022 was pleased to allow the said application and had clarified that the case would be fixed for the evidence of the defendants/petitioners. It is submitted that the said order dated 15.09.2022 has neither been annexed by the petitioners nor has been challenged by them. It is stated that in the said circumstances, the present revision petition deserves to be dismissed on the said point alone. It is further argued that it is a matter of settled law that a person who propounds the Will is required to prove the same and since it is the petitioners/defendants No.1 to 4 who are the propounders of the Will, thus, it is for them to lead evidence to prove the Will in the first instance.

ANALYSIS AND FINDINGS

4. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the impugned order dated 23.11.2022 (Annexure P-1) 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.

5. It is not in dispute that respondents No.1 to 4/plaintiffs has filed a suit for separate possession by partition of two properties which are detailed in headnote of the suit. It is also not disputed that the present petitioners/defendants No.1 to 4 are claiming their rights on the basis of Will dated 17.05.1979 stated to have been executed by Kaushalya Devi wife of Mela Singh in favour of defendants No.1 to 4. The trial Court vide



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order dated 07.01.2020 had framed 13 issues. Thereafter, vide order dated 18.01.2021, an additional issue was framed and it was directed that the defendants would lead their evidence qua the Will in the first instance and thereafter, the evidence of the plaintiffs shall be recorded. The relevant part of the said order dated 18.01.2021 is reproduced as under: -

“.....Henceforth the following issue is framed today and is listed at serial no.14 :-

14. Whether the Will executed by Late Smt. Kaushalya Devi in favour of defendants no. 1 to 4 is legal, genuine and valid Will? Onus of proof on the propounders of the Will I.e. defendants no. 1 to 4.

Since the question relating to proof of the Will has emerged on record so it is necessary to first record the evidence relating to the proof of Will in affirmation. Accordingly considering the principles of law of evidence, the defendants no. 1 to 4 are directed to lead their evidence qua the Will in first instance and thereafter the evidence of the plaintiff shall be recorded. Case stands adjourned to 15.02.2021.

Date of Order: 18.01.2021

*(Anoop Singh)
Civil Judge (Junior Division)-1
UID NO . PB00364”*

The said order dated 18.01.2021 has not been challenged before this Court and thus, the specific direction given by the trial Court in the said order to the effect that the present petitioners would lead their evidence qua the Will in the first instance, was accepted by the petitioners and thus, they are estopped from raising the pleas raised before this Court.

6. It would be relevant to note that the present petitioners had filed an application for recalling the order dated 18.01.2021 but vide order dated 29.10.2021, the said application was dismissed. However,



while dismissing the said application, inadvertently the trial Court had observed that the case was to come up for PWs. The said order dated 29.10.2021 has not been annexed along with the present revision petition but has been handed over by the learned counsel for respondents No.1 to 4 during the course of hearing and the aspect of the said order having been passed has not been challenged before this Court. The relevant part of the said order is reproduced hereinbelow: -

“1. This order of mine shall dispose of an application filed by defendants no.1 to 4/applicants for recall of the order dated 18.01.2021 whereby the fresh issue was framed directing the plaintiff to lead evidence in affirmative.

xxx xxx xxx xxx

7. As an upshot of above discussion, the application in hand is hereby dismissed. However, this order shall have no bearing on the merits of the case. Now to come upon 26.11.2021 for PWs.”

7. It is also not in dispute that an application was filed by the plaintiffs/respondents No.1 to 4 under Sections 151 and 152 CPC seeking clarification of the direction given in the order dated 29.10.2021 to the effect that the case was fixed for PWs. The said application was allowed vide order dated 15.09.2022 by observing that the same was only an accidental slip and it was clarified that the evidence of the defendants was to be recorded before adverting to giving opportunity to the plaintiffs to lead the evidence. The said order dated 15.09.2022 has also not been annexed along with the present petition but has been handed over by the learned counsel for respondents No.1 to 4 during the course of the arguments. The relevant portion of the said order is reproduced



hereinbelow: -

*“This order was passed on the application of the defendants to recall the order dated 18.01.2021, where under the defendants were ordered to lead evidence to prove the Will and the application was dismissed by the Court which ipso-facto affirms the order dated 18.01.2021 under which the defendants were ordered to lead the evidence first, in regard to the Will in question. So, just typographically writing PW is only an accidental slip and it cannot be opined that now, first the plaintiff has to lead evidence. **Accordingly, the application in hand is hereby allowed and it is clarified that now the evidence of the defendants is to be recorded before adverting to giving opportunity to the plaintiffs to lead the evidence.** However, perusal of the file reveals that an application for framing of additional issues is pending for consideration. Now to come up on 11.10.2022 for consideration on application for framing additional issues.*

*Announced:
15.09.2022*

*(Satish Kumar Sharma),PCS
Civil Judge Junior Division
(NRI Cases) Jalandhar.
(UID no.PB0375)”*

8. It would be relevant to note that the said order dated 15.09.2022 has also not been challenged before this Court and thus, the petitioners are estopped from raising the pleas raised before this Court.

9. Even a perusal of the impugned order would show that an additional issue was framed on an application moved by defendants No.1 to 4 for framing of additional issues and in para 7 of the said order, it was observed that in view of the order dated 15.09.2022, the evidence of the defendants is to be recorded first. The relevant para 7 of the impugned order is reproduced hereinbelow: -

“7. Reader of this Court is directed to mention the fact of



framing of additional issue with red ink. However, it is made clear that vide order dated 15.09.2022 it has already been clarified that evidence of the defendants is first to be recorded, in regard to the Will in question, before advertng to giving opportunities to the plaintiff to lead the evidence. To come up on 04.01.2023 for evidence of DWs.

*Announced:
23.11.2022*

*(Satish Kumar Sharma), PCS
Civil Judge, Jr. Divn.
Jalandhar. (UID no.PB0375)”*

It is the said part of the order which has been challenged before this Court. The facts stated hereinabove would clearly show that vide order dated 18.01.2021 as well as order dated 15.09.2022, the present petitioners were directed to record their evidence with respect to the Will in question in the first instance before the leading of evidence by the plaintiffs. Both the said orders have not been challenged in the present revision petition. It is a matter of settled law that the principle of constructive res judicata also applies to different stages in a proceedings. Once an order passed in a civil proceeding giving a specific direction/adjudicating an issue/point, is not challenged and is permitted to attain finality, then, on a subsequent stage it is not open to the party concerned to re-agitate the point/issue which has already been adjudicated.

10. Additionally, in the present case, it is apparent that one of the primary issue which is to be determined in the present case is with respect to the validity of the Will and the decision on the other issues would largely be dependent upon the decision on the said issue regarding Will.



The onus of proving the said Will is, as per settled law, on the petitioners/defendants No.1 to 4 who are propounding/relying upon the said Will. In the said circumstances, the directions given by the trial Court to the petitioners/defendants No.1 to 4 to lead evidence qua Will in the first instance is in accordance with law and deserves to be upheld. This Court in the judgment dated 20.09.2024 passed in **CR-5453-2024** titled as “**Ramesh Lakhanpal Vs. Neetu Sharma**”, had observed that it is a matter of settled law that the Court is first required to see that the propounder of the Will has been able to prove its due execution, before other aspects raised by the opposite side, including forgery etc. is considered.

11. The Hon'ble Supreme Court in the case of “**Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil**”, **reported as (2010) 8 Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be

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kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

12. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

August 21, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes