

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.116 of 2002.

Judgment reserved on:22.11.2007

Date of decision: 30<sup>th</sup> November, 2007.

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Amar Singh and others	....Petitioners.
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-Versus-

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Gita Devi	....Respondent
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Coram:

The Hon'ble Mr.Justice Deepak Gupta, Acting Chief Justice.

Whether approved for reporting? No

For the Petitioners: Mr.R.K.Bawa, Sr.Advocate with  
Mr.Inderjit Singh Narwal, Advocate.

For Respondent: Mr.G.C.Gupta, Sr.Advocate with  
Mr.Mohinder Gautam, Advocate.

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**Deepak Gupta, ACJ.**

This Civil Revision Petition is directed against the order of the learned Sub Judge (5), Shimla passed in Civil Suit No.495-I/99/95 titled as Geeta Devi vs. Amar Singh and others.

The brief facts of the case are that Geeta Devi plaintiff filed a suit for possession of two rooms, kitchen, veranda and cow-shed in ground floor of building situate in khasra No.241, mauza Rampur Keunthal, Tehsil and District Shimla. In the plaint it was alleged that the property in question had been constructed by Sh.Khushi Ram who had executed a Will bequeathing his entire movable and immovable property in favour of the plaintiff. It was alleged that the

defendants are strangers to the plaintiff and have no right to the property in question.

This suit was contested by the defendants on various grounds. The case of the defendants was that Khushi Ram was the father-in-law of defendant No.3 and that her husband Sukh Raj had got this suit filed with a view to avoid the order of maintenance passed against him. It was also alleged that defendant No.2 is the daughter of Sukh Ram and grand daughter of late Sh.Khushi Ram. It was denied that Khushi Ram had ever executed a Will in favour of any one or in favour of the plaintiff. A specific plea was taken that the alleged Will is a forged document and has been set up by Sukh Raj in order to avoid payment of maintenance to defendant No.3.

The suit was filed on 7.8.1995. Written statement was filed on 3.6.1996. Issues in the suit were framed on 2.9.1997. As many as 18 issues were framed and issue No.10 as framed reads as follows:

“10.Whether Sh.Khushi Ram executed a valid Will dated 3.12.1990 in favour of the plaintiff as alleged?...OPP”

Thereafter the plaintiff led evidence and the statement of the plaintiff's witnesses were completed on 17.8.2000 when the matter was listed for the evidence of the defendants for 4.10.2000. Some witnesses were examined and various dates were given for defendants' further evidence. The case was then fixed for 5.10.2001 for defendants' evidence on which date no witnesses were present nor steps were taken to summon the witnesses. Instead, an application under Order 6 Rule 17 CPC was filed for amendment of

the written statement. By way of amendment the defendants want to add the following lines at the end of para 1 of the reply on merits:

“Even otherwise the will in question is a false and fabricated document, especially due to the reason that late Shri Khushi Ram was at the time of execution of the will was more than 110 years old and due to old age the deceased was having a weak eye sight and he had become hard of hearing. His eye sight was so weak that he could not see properly and required help even in moving and his hearing was so much impaired that he was not in a position to hear and distinguish even on saying at a very loud voice. He was incapable of moving and therefore he could not come to execute the will. Thus the will in question is fabricated document having no force in the eyes of law.”

This amendment has been disallowed by the lower Court on the ground that even if the Will is held to be not proved the defendants will have no right to inherit the property and it is only Sukh Raj who being the natural heir will inherit the property and since Sukh Raj being natural heir has not challenged the Will the defendants cannot be allowed to challenge the same.

I have heard Sh.R.K.Bawa, learned senior counsel for the petitioners and Sh.G.C.Gupta, learned senior counsel for the respondent.

On behalf of the petitioners it has been contended that the learned trial Court fell into a grave error in holding that the petitioners had no right to challenge the Will especially when they had specifically alleged that the suit had been filed at the instance of Sukh Raj to get out of the order of maintenance. It is further stated that the amendment does not change the nature of the suit and no prejudice shall be caused to the plaintiff if the amendment is allowed.

On the other hand Sh.G.C.Gupta, learned senior counsel for the respondent submits that there is no jurisdictional error and he further submits that what is now being added by way of pleadings is basically evidence which could have led on issue No.10 and therefore he has supported the order of the learned trial Court.

In my view, the learned trial Court erred in holding that the present petitioners could not challenge the Will. The respondent/plaintiff had filed a suit claiming title to the property on the basis of a Will of Sh.Khushi Ram. The defendants were well within their right to question the title of the plaintiff. Merely because the natural heir Sukh Raj had not challenged the Will did not mean that the defendants who are admittedly in occupation of the disputed property are estopped from challenging the title of the plaintiff based on the Will. In fact as mentioned above defendants had already challenged the Will and issue had been framed in respect of the Will, onus to prove which was on the plaintiff.

However, despite my above findings I am of the view that the amendment cannot be allowed. I have extracted the proposed amendment in extenso. A bare reading of the amendment sought clearly shows that it is only an amplification of what had already been stated by the defendants in their written statement. They had even previously taken the plea that the Will is a forged document. While leading evidence the petitioners could have proved the facts which they now want to allege in the written statement. There is nothing which prevented the defendants from proving any of the facts that Sh.Khushi Ram had weak eye sight, that he was 110 years

of old or that he was hard of hearing or that he was incapable of moving and therefore could not come to execute the Will. The question whether the Will was fabricated or forged was covered by issue No.10. It may be true that the proposed amendment does not change the nature of the suit but it is more than amply clear that the proposed amendment is not at all necessary to decide the suit.

The validity of the Will is the subject matter of issue No.10 extracted above and the parties are free to lead evidence in support of their respective cases. It appears that the defendants/petitioners want to prolong and linger on with the case which was filed more than 12 years back on one pretext or the other. They being in possession and not having produced evidence have filed this application with malafide and oblique motive of delaying the trial. There is no necessity to allow the application since the points now sought to be raised had already been raised and were covered by issue No.10.

In view of the above discussion, I find no merit in the petition which is dismissed with costs assessed at Rs.3000/-. The parties are directed to appear before the learned trial Court on 27<sup>th</sup> December, 2007. Since the suit has been pending for more than 12 years and is at the stage of defence evidence the learned trial Court is directed to hear and decide the suit as expeditiously as possible and in any event not later than 31<sup>st</sup> August, 2008. The Registry shall ensure that the record of the suit is sent to the trial Court immediately so as to reach well before the date fixed.

November 30, 2007.  
PV

**( Deepak Gupta ),**  
**Acting Chief Justice**