

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1156 of 2015

Date of decision :-February 19, 2015

Iqbal Singh (deceased) and othersPetitioners

Vs.

Bhuipinder Singh and othersRespondents

CORAM : Hon'ble Mr.Justice Dr.Bharat Bhushan Parsoon.

Argued by: Mr.Satbir Rathore, Advocate for the petitioner.

Dr.Bharat Bhushan Parsoon, J.

1. Order dated 04.02.2015 of the lower Court whereby an application filed by the petitioner for permission to get the signatures, on the documents mentioned in the application compared and produced handwriting expert in order to prove his report, has been dismissed as also order dated 05.02.2015 whereby evidence of the petitioners has been closed by the Court order are under challenge in this revision petition.

2. It is claimed in this petition that there are Wills dated 10.03.1987 and 09.06.1998 propounded by the plaintiffs-respondents herein. These have been challenged as fraudulent and fabricated documents by the defendants-petitioner herein, in the written statement.

3. When the defendants despite having many opportunities had not concluded their evidence, they were given many opportunities to conclude the evidence but instead of concluding their evidence they had made an application for producing expert witness with regard to comparison

of signatures on the Wills 09.06.1998 and 10.03.1987 with signatures on mortgaged deeds dated 17.07.1997 and 14.09.1979 from the record of Joint Sub-Registrar, Tanda and from passport of Sharam Singh Ex.D/2.

4. It would be relevant to mention here that even earlier one such application was moved by the defendants which was dismissed. Counsel for the petitioner has claimed that fresh application is not barred and dismissal of earlier application does not operate as res-judicata. Support has been sought from the case of **Kalaiselvan Vs. Velusamy and another 2007(57) AIC 822.**

5. Very foundation of the case of the defendants is to challenge the Wills dated 09.06.1998 and of 10.03.1987. This case was instituted on 23.12.2000 and is pending adjudication since then. 26 opportunities have already been availed by the defendants. Despite caution having been given time and again, the defendants did not conclude their evidence. The evidence sought to be led now, was well within the knowledge of the defendants. Remaining evidence could have very well been examined but the matter was taken very casually by the defendants.

6. Relevant operation of the impugned order with approval is appended as below:-

“This case was remanded back vide order dated 04.12.2013 passed by the Court of learned Additional District Judge, Hoshiarpur. After the remand of the case, defendants have already availed 26 opportunities for concluding their evidence. But despite availing numerous opportunities, defendants/applicants did not conclude their evidence. Today, was the last opportunity afforded to the defendants for concluding their evidence and said opportunity was granted to the defendants subject to payment of costs of Rs.200/-. But as already referred above,

instead of producing any evidence, applicants/defendants have moved the application under consideration. This Court is of the opinion, that the application under consideration merits dismissal.”

7. Counsel for the petitioners-defendants has urged that when plaintiffs have examined handwriting expert they should also be allowed to do so. Support has been from the case **Mohd. Aslam Vs. Shambhoo Singh and others 2005(3) RCR(Civil) 166 Rajasthan.**

8. Even when 26 opportunities were given to the defendants, no one had stopped them from examining the handwriting expert. A perusal of the paper book reveals that the defendants have been taken the matter very casually and had moved application only when last opportunity was there, after availing 26 opportunities to conclude their evidence. The application for examining expert witness was rightly dismissed when the evidence was not concluded even on the adjourned date. Evidence of the petitioner-defendants was rightly closed on 05.02.2015. Even otherwise this evidence sought to be produced is of the nature of rebuttal evidence and there is scope of intervention with the impugned order.

9. The impugned order is not only well-written but is elaborate wherein discussion of facts as also attending circumstances with law applicable has effectively been made. This revision petition, being devoid of any merit, is dismissed.

February 19, 2015
anil

(Dr.Bharat Bhushan Parsoon)
JUDGE