

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1668 of 2014

Date of decision: May 11, 2015.

Santokh Singh

... **Petitioner**

v.

Sardool Singh etc.

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri A.S. Bhatti, Advocate, for the petitioner.

None for the respondents.

Dr. Bharat Bhushan Parsoon, J. (Oral):

None for respondents No.1 to 4 has appeared despite service for 20.5.2014. Respondent No.5 has been given up.

2. Dismissal of application of defendant No.1 Santokh Singh, petitioner herein, for comparison of thumb impression of deceased Makhan Singh as also signatures of Lambardar Lakhwinder Singh on documents Exs.D1 and D2 and documents Exs.D1 and D3, forms foundation of this revision petition.

3. Will dated 6.6.1980 (Ex.D1) alleged to have been executed by deceased Makhan Singh in favour of the defendant, petitioner herein, is being contested. To sustain the Will, thumb impressions of the testator have been sought to be compared with thumb impressions on sale deed Ex.D2 purported to have been executed by him in favour of three vendees, including the petitioner-defendant.

4. In this revision petition, the petitioner has claimed that the

thumb impressions of testator Makhan Singh and the signatures of attesting witness on the Will are to be proved from two documents, validity of which is allegedly not in dispute. It is further claimed that sale deed dated 15.11.1972 (Ex.D3) is a public document and is per-se admissible in view of its antiquity.

5. During the course of arguments advanced by Counsel for the petitioner, perusal of the paper book has been made.

6. It is revealed therefrom that thumb impressions of testator are alleged to be existing on documents Exs.D1 and D2 whereas signatures of attesting witness Lambardar Lakhwinder Singh are allegedly existing on documents Exs.D1 and D3. Ex.D1 is a Will of 6.6.1980. There is yet another Will of deceased Makhan Singh, which is of 20.7.1994. Comparison of the thumb impressions on the disputed Will of 6.6.1980 Ex.D1 from another Will of the same testator of 20.7.1994 would not be adding validity and legality to the Will of 6.6.1980 (Ex.D1) which is being propounded by the petitioner-defendant. The plaintiff however has propounded the Will dated 20.7.1994. Both Wills are competing with each other and are under scanner in this litigation. One Will under question cannot be proved by proving genuineness of thumb impressions of the testator on the other disputed Will of the testator. In short, thumb impressions of the testator on the other Will when itself is in doubt, because the other document is also disputed, is not an admitted document.

7. Similarly, sale deed Ex.D2 is not an admitted document. Same is the position with sale deed Ex.D3 of 15.11.1972. Merely because sale deed is having antiquity, by itself does not give sanctity beyond question to the alleged thumb impressions of the vendor as also of the alleged signatures of the attesting witnesses.

8. Learned lower court was right in coming to a conclusion that this application is not genuinely made and is merely to delay and dilate the proceedings. There is different procedure for proving a Will. Examination of at least one of the attesting witnesses is necessary. Mere comparison of

thumb impression of the testator or signature of an attesting witness would not be sufficient to prove the Will. Observations of the court below being apt and relevant, are reproduced for ready reference, as under:-

“As per law he is required to prove the will by examining the attesting witnesses. One of the attesting witness Nambardar Lakhwinder Singh has already died and the defendant No.1 through his application wants the comparison of his signatures in Punjabi over Ex.D1, the will and Ex.D3 a sale deed dated 15.11.1972. Nambardar Lakhwinder Singh has stood as attesting witness to both these documents. Section 69 of the Evidence Act provides for mode of proving a document where no attesting witness is available or cannot be found i.e. where the attesting witness has died like in present case, then it must be proved that the attestation of one of the attesting witness at least is in his handwriting. It should also be proved that the signatures of the person executing the document is in the handwriting of that person. This means any person who can identify the signatures and the handwriting of the executant and of one attesting witness's signatures, can prove the document according to this Section. But, in the present case, the defendant No.1 wants to create evidence by examining a handwriting expert by comparing the signatures of a document which is still required to be proved, instead of following the procedure laid down in the Section 69 of Evidence Act.

Hence, I am of the considered opinion that no purpose would be served if the present application is allowed. It shall further delay the suit which is on its way to completion. I find no merit in the present application of the defendant no.1 and the same stands dismissed.”

9. The impugned order, discussing all the aspects, is elaborate and well written. There is neither any factual nor legal error.

Dismissed.

May 11, 2015.
kadyan

[Dr. Bharat Bhushan Parsoon]
Judge