

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.176 of 2014

Date of Decision : 12.10.2015

Rajinder Kumar and another

..... Petitioners

Versus

Mayank Verma and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. ADS Jattana, Advocate
for the petitioners.

Mr. Saurabh Bajaj, Advocate
for the respondents.

K. KANNAN, J.

The revision petition is the instance of contesting defendants in suit, aggrieved by the order allowing the plaintiff to bring additional evidence which the plaintiff would qualify as fresh evidence that has become possible by impleadment of 5th defendant.

The suit relates to the estate of Mange Ram Verma. The defendants No.1 to 4 are the sons of Mange Ram and the plaintiff is the son of 4th defendant. The plaintiff has set up a Will in his favour to the exclusion of the sons. The sister of defendants No.1 to 4 Saroj Verma was sought to be impleaded

which was originally declined, since in the Will, there was no reference made to the daughter of Mange Ram Verma as the beneficiary.

In a revision brought to this Court against the order declining the impleadment, this Court modified the order and allowed for the impleadment of the sister of defendants No.1 to 4. She had been served through notice and she remained ex parte.

The plaintiff has already examined his witnesses and has also examined a person purporting to be an expert who has claimed to have drawn a report on the comparison of signatures found in the copy of the Will and the signatures. The cross-examination of the expert has also been done, eliciting the fact that the appointment of the witness was done without reference to the Court and the comparison had been done with a document which had not taken from the original produced in Court. The defendants have also examined themselves after the plaintiff's side was closed. The plaintiff has now sought permission of the Court to produce yet another expert as a witness to prove the Will. The justification of such an exercise is that the evidence as regards the newly impleaded 5th defendant must be taken as requiring a *de novo* trial qua the 5th defendant and the plaintiff ought to have such a liberty. The Court below has accepted this contention.

I find whole order to be illogical or illegal.

The counsel appearing on behalf of the respondents seeks to support the order by pointing out that the evidence sought to be given by the plaintiff cannot be taken as additional evidence, after the examination of the defendant's evidence but must be taken as fresh evidence which he was competent to give, when the 5th defendant is impleaded.

The counsel would refer to me to a decision of this Court in 'Ram Pal v. Kulwant Rai and others' 2006 (4) R.C.R. (Civil) 516 that examines the issue of who shall be treated as a necessary party. The Court was stating that on the impleadment of a person as a party, the trial Court shall become *de novo*. The expressions found in the judgment did not actually confront a situation what we find in that case. The expressions again are not even the ratio in that case for the Court has only quashed the petition of impleadment at the Appellate Court. The observation as regards a *de novo* trial in the said judgment, in my view, cannot be supported for the point urged by the counsel appearing for the respondents. This Court's observations in 'Ram Pal v. Kulwant Rai and others' (supra) of a *de novo* trial must be understood as a trial that might become imperative at the instance of the third party later impleaded. In this case, if the sister who is impleaded subsequently, has also remained *ex parte* and was not seeking for recalling of any witness brought

either by the plaintiff or by the defendant, the plaintiff cannot plead that the impleadment of 5th defendant gives to him a new right to give evidence afresh.

The impugned order is set aside and the revision petition is allowed on the above terms.

**(K. KANNAN)
JUDGE**

12.10.2015
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