

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

Civil Revision No.1843 of 2014
Date of decision : September 14, 2015

Baldev Singh and another

....Petitioners

Versus

Mukhtiar Singh @ Makhan Singh

....Respondent

CORAM : HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Aseem Kalia, Advocate for
Mr. Premjit Kalia, Advocate
for the petitioners.

Mr.Sachin Sharma, Advocate
for the respondent.

K. KANNAN, J. (Oral)

The plaintiff, who has sought for mandatory relief for removal of construction made by the defendant on the wall claimed by the plaintiff inclusive of the property, the defendant has set up a defence that there had been an agreement between the plaintiff's father and the defendant's predecessor that will be treated as common and allowing for certain rights to be exercised on such property. The plaintiff has examined his father as a witness and he has denied that he

has executed any such document as canvassed by the defendant. Since there is no specific issue framed as regards the genuineness of the agreement set up by the defendant, the plaintiff has filed by way of caution an application for examination of an expert to make comparison of the signature of the father in admitted documents with the signature found in the agreement propounded by the defendant and give a report since there was an objection taken that the report of an expert cannot be exclusive, the Court had dismissed the petition. It is against this order that the revision has been filed.

The plaintiff alone shall decide on the quality of evidence which he wants to produce. Neither the Court nor the defendant will prejudge on the evidence that is offered to be tendered, unless the evidence itself is irrelevant. There is a particular reason why the plaintiff had to move to the Court. Since the trial Court had not framed specific issue as regards the genuineness of the agreement propounded by the defendant which the plaintiff disputes, he may not be able to even bring a rebuttal evidence in respect where there is no specific issue.

The following issue is framed for consideration :-

Whether the agreement dated 04.09.1985 purported to have been executed between the plaintiff's father and the defendant's predecessor as propounded by the defendant is true, valid and forcible? OPD

This issue shall be taken as incorporated and the defendant

will undertake to discharge the onus. The plaintiff will have a right of rebuttal on such evidence and if the plaintiff moves an application for an expert opinion and for comparing the signatures by appropriate judicial process, the Court shall consider the same at an appropriate time, unhindered by the decision taken by the Court below declining the plaintiff of such permission.

The order declining permission by the Court below is sustained for the present granting to the petitioner the liberty to move a fresh application in the manner aforesaid.

The revision petition is disposed of with the above observations.

(K.KANNAN)
JUDGE

14.09.2015
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