

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

C.R. No.3268 of 2011 (O&M)

Date of Decision.03.03.2015

2. C.R. No.4088 of 2011 (O&M)

Sukhpal Singh

.....Petitioner

Versus

Joginder Kaur and others

.....Respondents

Present: Mr. Parminder Singh Kanwar, Advocate
for the petitioner.

Mr. K.S. Cheema, Advocate
for respondent No.8.

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?

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K. KANNAN J. (ORAL)

C.M. No.4508-CII and 4518-CII of 2015

The applications for impleading the legal representatives of deceased-respondent No.1 are allowed and the legal representatives of respondent No.1 are ordered to be brought on record.

Registry is directed to carry out amendment to the memo of parties.

Main cases

1. The civil revisions are against interim orders passed during the course of trial. The plaintiff was propounding a Will said to have been executed by one Dilbag Singh. Issue No.2 was whether the Will was true, the onus of which was obviously on the plaintiff and he has

examined his witnesses relating to the Will as well. Since the defendant was contending for a plea that the Will was false and fictitious, the Court has also framed issue No.7 whether the Will was false and fictitious. On the defendant's side, the defendant has examined a handwriting expert and after his evidence was closed, the plaintiff has sought for letting in rebuttal evidence pointing out to the fact that issue No.7 was on a plea raised by defendant, the plaintiff is entitled to lead a rebuttal evidence. The counsel would also refer to a judgment of the Division Bench of this Court where the Court has pointed out to the position of law that where the plaintiff closes his case and the defendant brings evidence on an issue, the burden of which was on the defendant, the plaintiff must have a right of rebuttal. There was an application filed for additional evidence that was dismissed and the revision is against the dismissal of plea for additional evidence and for permission to examine an expert by comparing the signature of Dilbag Singh with some admitted document. The trial Court has found that issue No.7 was quite an unnecessary issue, for the person who was a propounder of Will always has to take the burden for which Issue No.2 had been framed and the plaintiff has also given evidence.

2. I find the observation of the trial Judge correct and the issue of whether the Will was true or not need subsumed the plea of denial of the Will as false and fictitious. Indeed, Issue No.7 was unnecessary and it ordered to be struck down. The plaintiff will have no luxury of giving additional evidence or to examine any expert of what he must have done even at the time when he closed his evidence. He ought to have known that as propounder of Will, burden of proof was heavily on him to prove

the genuineness of the Will or the signature found in the document. He cannot contend that he has not availed an opportunity of placing an expert witness only because the defendant has chosen to adduce such evidence through the expert. The order passed already would not require any intervention and it is sustained.

3. The civil revisions are dismissed.

(K. KANNAN)
JUDGE

March 03, 2015
Pankaj*