

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4988 of 2014
Date of decision: 20.11.2015

Lavinder Singh

... Petitioner

VerRsus

Mukhtyar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Harshit Jain, Advocate for the petitioner.
Mr. PK Garg, Advocate for the respondents.

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?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 14.07.2014, rendered by Additional Civil Judge (Sr. Divn.), Sunam, application moved by the petitioner/contesting defendants to decline permission to the plaintiff-respondent No.1 to examine Sukhwinder Singh Sewadar in his evidence in rebuttal, has since been dismissed. The conclusion recorded by the trial court reads as thus:

“6. Accordingly, the onus to prove the said Will dated 11.06.2005 was upon the contesting defendants. Record further transpires that the contesting defendants have concluded their

evidence. Accordingly, in view of the pleadings of the parties, opportunity to rebut the evidence on the issue of Will becomes necessary to be given to the plaintiff. Then, it appears to be a material piece of evidence on the issue of Will that, out of the contesting parties, who performed the last rites of the original owner namely Bhagwan Singh and immersed his ashes. Accordingly, it becomes necessary that the plaintiff be granted an opportunity to produce the relevant record from Takhat Shree Kesgarh Sahib, Anandpur Sahib regarding immersing of ashes of Bhagwan Singh in his evidence in rebuttal.

7. Regarding opportunity to the plaintiff to lead the evidence in rebuttal on the issue of Will, reliance is placed upon the authoritative judicial pronouncement in the case titled as Gurbaksh Singh Versus Jagat Singh and others cited as 1991 Civil Court Cases 47 (P&H).”

Learned counsel for the petitioner submits that plaintiff had duly pleaded in the plaint that he had performed the last rites of his father and, thus, he could examine Sukhwinder Singh Sewadar, while he led his evidence in affirmative only. For, no such evidence could be permitted to be led in rebuttal. Apparently, the submission lacks conviction and cannot be countenanced.

Concededly, plaintiff is claiming the estate of his late father Bhagwan Singh by natural succession. Therefore, he only had to prove that he happened to be his son, which otherwise is not disputed. Petitioner, who happened to be the

nephew of the deceased, has set up a Will dated 11.06.2005, that is alleged to have been executed in his favour. Issue No.4 as regards execution and validity of the Will is framed and the burden of proof is placed upon the defendants.

Naturally, plaintiff has a right to lead rebuttal evidence to the said issue. And while leading rebuttal evidence, he could always show that he had a cordial relationship with the deceased as he performed his last rites and immersed his ashes. Which, of course, would reflect upon whether deceased actually executed the Will in question in a free and sound disposing mind. It is from that stand point he sought to examine Sukhwinder Singh Sewadar, Takhat Shree Kesgarh Sahib, Anandpur Sahib. And once defendants lead their evidence in affirmative on issue No.4, plaintiff could always examine the said witness in rebuttal evidence.

No ground is made out to interfere with the order being assailed, in exercise of revisional jurisdiction. Petition being devoid of merit is accordingly dismissed.

November 20, 2015
Rajan

(Arun Palli)
Judge