

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5409 of 2015
Date of decision : August 24, 2015

Rajinder Kumar

..... Petitioner

Versus

Dalip Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

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?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order 6.8.2015 whereby at the final stage of the suit an application dated 22.7.2015(Annexure P-3) by invoking the provisions under Order 14 Rule 5 CPC moved by the petitioner-defendant No.1, has been rejected.

Mr. A. K. Khunger, learned counsel appearing on behalf of the petitioner submits that the impugned order suffers from illegality, much less has been passed by the trial court in not exercising the jurisdiction vested in it, for the reason the additional issue/issue already framed has been sought to be recasted are very much essential and necessary for adjudication of controversy between the parties to the *lis*.

He further submits that on pleading of the parties the court while framing the issues framed issue no.2, and the onus was fixed on the plaintiff which was now sought to be recasted as to which of the parties to the *lis* has forged the Will, therefore, and the said issue is required to be recasted, as it would help the court in arriving at an adjudication of the controversy between the parties to the *lis*, more effectively.

I have heard learned counsel for the petitioner and appraised the paper book.

The issue No.2, already framed, reads thus:-

*“Whether the Will dated 6.10.2008 is null and void ?
OPP.”*

The issue which, has now sought to be recasted reads thus:-

“Which of the party whether the defendant or plaintiff have forged the Will dated 6.10.2008 of Balram deceased after his death?OPP”

It is now a settled law that as per Section 101 of the Indian Evidence Act, 1872 that after the party challenging the Will has discharged the burden, the onus to rebut shifts upon the other side.

The parties have already lead their respective evidence by leading evidence in support of their respective contentions/averments. The issue which is now sought to be

recasted instead of the issue already framed, therefore, does not warrant recasting as the petitioner has already taken specific plea in the written statement regarding handing over of the Will by the plaintiff. The trial court would examine the oral and documentary evidence led in this regard while adjudicating or deciding suit.

There is no illegality and perversity in the aforementioned impugned order. The revision petition is devoid of merits.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

August 24 , 2015
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