

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.571 of 2015.
Decided on:-23.01.2015.

Tarwinder Kaur.

.....Petitioner.

Versus

Parminder Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present:- Mr. Ravinder Singh Rana, Advocate
for the petitioner.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of application (Annexure P-1) for leading additional evidence by defendant No.2, petitioner herein, by the lower court vide impugned order dated 8.1.2015 (Annexure P-2), forms genesis of this revision petition.

2. A suit filed by the plaintiffs, respondents No.1 and 2 herein, is pending adjudication against defendant No.2, petitioner herein, as also against defendant No.1, respondent No.3 herein, for seeking declaration to the effect that the respondents-plaintiffs are owners in possession of the property in dispute. Relief of permanent injunction has also been sought therein.

3. During the proceedings in the suit, defendant No.2, petitioner herein, had set up a Will dated 2.11.2006 allegedly executed by her late father Raghbir Singh in her favour. In order to prove signatures of her father on the said Will, the applicant-defendant wanted to examine handwriting and fingerprint expert. This application was strongly resisted by the opposite side and the court finding that it had no merit, dismissed the same.

4. Having been filed on 7.9.2007, the suit is at the final stage. Written statement was filed by the defendants long back wherein entire case of the respondents-plaintiffs was denied by them. Will was set up in the written statement itself. Merely because handwriting and fingerprint expert has been examined by the plaintiffs would not provide a ground to the applicant-defendant to also produce handwriting and fingerprint expert that too in additional evidence when the same could have been produced earlier in the affirmative evidence.

5. All the facts and circumstances as also the law cited by applicant-defendant No.2, petitioner herein, has duly been discussed by the lower court. The petitioner has already examined herself as also witnesses of the Will to prove the same. It appears that examination of handwriting and fingerprint expert by the respondents-plaintiffs has tremorised the defendants to examine handwriting and fingerprint expert in repudiation of the rebuttal evidence of the plaintiffs, which is not permissible in law being rebuttal to rebuttal evidence.

6. The sole question for determination at this stage is as to whether the amendment sought for is required for complete, effective and competent adjudication of the matter in controversy? When entire circumstances are looked into, the clear answer is 'no'. It would be relevant to mention here that the respondents-plaintiffs right from the very start had taken a specific

stand in their replication that the Will set up by the applicant-defendant, petitioner herein, is forged and fabricated. It was, thus, incumbent upon the defendant to examine handwriting and fingerprint expert in her evidence if she so wanted but despite availing of sufficient opportunities, such evidence of handwriting and fingerprint expert neither was asked for nor was led.

7. Argument of learned counsel for defendant No.2, petitioner herein, that the case of the respondents-plaintiffs could not have been anticipated and hence a necessity has arisen to examine the handwriting and fingerprint expert, is an argument for which there would be no takers. This evidence could have very conveniently been led by the applicant-defendant and was of her knowledge and possession but due to lack of due diligence, the same was not produced. Even viewing from another angle, this application, even otherwise is not bonafide and rather, is an abuse of process of the court.

8. The authority cited by counsel for the petitioner reported as ***Kashmiri Lal Goyal Versus Sq. Ld. Gurdial Singh and others 2005(1) PLR 797 (P&H)*** having entirely different facts and circumstances does not support and sustain the case of the petitioner. In that case, examination of handwriting and fingerprint expert as a witness was allowed to be examined by the defendant when he had no opportunity to anticipate the evidence that may be required to rebut the evidence of the plaintiff led in affirmative. But the present one is a clear case where the defendant seeks to produce evidence in rebuttal to the rebuttal evidence produced by the plaintiffs which is neither legal nor valid. The impugned order is well-written, takes into account entire facts and circumstances and does not suffer from any factual or legal error.

9. Keeping in view the totality of facts and circumstances as

mentioned earlier, the application (Annexure P-1) for leading additional evidence by defendant No.2, petitioner herein, was rightly dismissed by the lower court vide impugned order dated 8.1.2015 (Annexure P-2).

10. Sequelly, no ground to interfere with the impugned order is made out; affirming the same, this petition, being devoid of any merit, is dismissed.

January 23, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

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