

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5893 of 2015 (O&M)
Date of decision: 09.09.2015

Jagteshwar Singh

... Petitioner

Vs.

Gurtej Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Ms. Ekta Thakur, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Notice of motion.

On asking of the Court, Mr. Parvinder Singh Gullani, Advocate, accepts notice on behalf of respondents No.1 and 2 and filed his 'Power of Attorney' in the Court. The same is taken on record.

Challenge in the present petition is to the impugned order dated 22.07.2015, whereby, the application filed at the behest of the petitioner-plaintiff for examining the second son of Ashok Kumar, by way of additional evidence, has been dismissed.

Ms. Ekta Thakur, learned counsel appearing on behalf of the petitioner submits that both the attesting witnesses of the Will dated 09.08.2007 have since expired. In order to prove the execution

of the Will, much less, in compliance of the Section 68 of the Indian Evidence Act, the sons of attesting witnesses have been examined. She further submits that other son of Ashok Kumar, attesting witness, is required to be examined. She further submits that no prejudice would be caused to the respondent-defendant, in case, the application in hand is allowed. At the best, respondent-defendants would have a chance to cross-examine the witness. She further submits that the trial Court, while dismissing the application has expressed some opinion on merits of the case, which is liable to be expunged.

Mr. P.S.Gullani, learned counsel appearing on behalf of the respondent No.1 and 2 submits that application in hand tantamounts to filling up the lacuna, therefore, there is no illegality and perversity in the impugned order and no interference is warranted in the same.

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

No doubt that the petitioner-plaintiff has already examined sons of attesting witnesses of the Will and also the scribe. The trial Court has rightly dismissed the application as examination of another son of the attesting witness, Ashok Kumar would tantamount to filling up lacuna. However, on going through paragraphs No.5 and 6 of the impugned order, which reads thus:-

“5. The plaintiff wants to examine Ashwani Kumar, s/o

Late Sh. Ashok Kumar by way of additional evidence so as to prove the signatures of his father i.e. Ashok Kumar who is attesting witness upon the Will dated 09.08.2007. Perusal of the file shows that the plaintiff has already examined the elder son of the said Ashok Kumar as PW-6 Raj Kumar. He also examined another son of second witness namely Mehar Chand as PW-7. The scribe of the Will has also been examined as PW-1. The plaintiff has examined eight witnesses to prove his case. Now the plaintiff claims that he wants to examine second son of late Sh. Ashok Kumar to identify the signatures of his father. However, for this purpose he already examined PW-6 Raj Kumar son of attesting witness late Sh. Ashok Kumar on Will dated 09.08.2007 and this witness has been cross examined at length by the defendants. Why the plaintiff did not examine the second son of attesting witness earlier is not explained. A bare reading of the application shows that the plaintiff wants to fulfill his lacuna in the evidence to the effect that sons of attesting witnesses of the Will PW-6 and PW-7 have stated that they have not seen the original Will in the Court file or outside the Court. Now the plaintiff claims that original Will is at page No.443 of the file. Perusal of the said Will attached at page No.443 of the file shows that the same

is attested copy and not original Will. This observation is duly supported by the fact that the plaintiff while stepping into witness box in his statement of tender has tendered the said Will as Mark -A. Had the Will at page 443 been the original Will, why the plaintiff did not tender the same at that time. PW-8 Gurnam Singh also tendered the document as Mark A. The plaintiff did not claim Will at page 443 to be original at the time of tendering of the document by his own witnesses nor confronted his witnesses with this fact. Perusal of the Will at page No.443 shows that the thumb impressions as well as the signatures are in blank ink. Apparently, it appears upon seeing the thumb impression and some of the signatures that these are merely photocopy and not signatures made in original black ink. Even the stamp of the Deed Writer at the last page shows that it is in black ink which is because the said Will is photocopy. No doubt the signature of the Sub Registrar is in blue ink but that is so because the said Will is attested copy not the original Will. Also, had this been the original Will it would have also borne the stamp of the office of the Sub Registrar which would also be in blue ink and that stamp is not there. Thus, the whole claim of the plaintiff in this application is merely an after thought.

6. *Even if the contention of the plaintiff is considered for the sake of argument perusal of the file shows that the plaintiff has already availed sufficient effective opportunities for bringing his evidence. The suit was instituted on 08.03.2010. Issues were framed on 23.08.2011. The plaintiff had availed 12 opportunities to lead his evidence over a span of four years. In addition to these opportunities, the plaintiff also moved baseless application for withdrawing the suit with permission to file fresh one on same cause of action which was dismissed. Application for amendment of plaint which was also dismissed. Thereafter, by placing reliance on the judgment of Hon'ble Supreme Court in 2011 (4) RCR Civil 807, the evidence of the plaintiff was closed vide order dated 02.05.2015 by giving plaintiff one opportunity to bring evidence before the evidence of the defendant. Thereafter, on 11.05.2015, the plaintiff had brought his witnesses who were examined and order for closing the evidence of the plaintiff was made absolute. It is also pertinent to note that plaintiff had moved an application for appointment of Court Commissioner to examine his witnesses at Fazilka which was dismissed by the Court and on the very next date, the plaintiff got these witnesses examined himself. All this shows the act and*

conduct of the plaintiff.”

The trial Court while entertaining the application, should not have discussed the merits of the case with regard to the lis.

I am of the view that such observations are required to be expunged as it reflects on merits and de-merits of the case and the Court should not have deliberated upon the same. Time and again the Hon'ble Supreme Court and this Court observed that the trial Court while deciding the application, should not discuss the merits of the case and should be careful in future while expressing opinion on merits of the case by referring to the evidence as the case had not reached to the stage of final arguments. Accordingly, paragraphs No.5 and 6 of the impugned order are expunged and rest of the impugned order is upheld.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

September 09, 2015
savita