

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.6129 of 2015 (O&M)

Date of decision : 18.09.2015

Manjit Kaur

...Petitioner

Versus

Surjit Singh and another

...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: Mr. Amit Kumar Saini, Advocate for the petitioner.

Mr. S.S. Rangi, Advocate for the caveator.

AMIT RAWAL, J. (Oral)

Notice of motion to the Caveator.

Mr. S.S. Rangi, Advocate accepts notice on behalf of Caveator.

Challenge in the present petition is to the order dated 17.07.2015 (Annexure P-9), whereby the trial Court has granted the permission to respondents-defendants to examine the expert in rebuttal.

Mr. Amit Kumar Saini, learned counsel appearing on behalf of the petitioner-plaintiff submits, that onus to prove the execution of the Will was on defendants-respondents. With the consent of the parties, the defendants in the first instance, were called upon to lead the evidence in

affirmative. The respondents-defendants did not examine any expert but though one of the witness and scribe to the Will had been examined. The petitioner-plaintiff in reply examined Hand Writing Expert at the rebuttal stage. The defendants sought indulgence of the Court by seeking permission of the Court to examine the expert for the purpose of comparison of the signatures of the testator on the Will. Such procedure is not only unknown to the law, but against the mandate of the statutory provision of Order 18 Rule 3 of CPC and as well as ratio decidendi culled out by the two Division Bench of this Court in *Avtar Singh and another Vs. Baldev Singh and ors, 2015(1) PLR 230* and *Surjit Singh and ors. Vs. Jagtar Singh and ors., 2007 (1) RCR (Civil) 537*.

Mr. S.S. Rangi, learned counsel appearing on behalf of respondents-defendants-caveator submits that Court has exercised the discretion in the interest of justice by granting the permission to examine the expert for comparison of the signatures. In support of the contention, he has relied upon judgment rendered by learned Single Judge of this Court in *Kashmiri Lal Goyal Vs. Sq. Ld. Gurdial Singh and ors. 2005(1) PLR 797*. He further submits that there is no illegality and perversity in the impugned order.

I have heard learned counsel for the parties and appraised the paper book and case law cited above.

The Order 18 Rule 3 of Code of Civil Procedure and the explanation thereto does not contemplate that the parties who have led evidence in affirmative in the absence of the rebuttal issue, can be permitted to lead evidence in rebuttal. In order to lend support to the aforementioned

findings, I rely upon ratio decidendi rendered in Avtar Singh and another (supra) and Surjit Singh and ors. (Supra), whereby two Division Bench of this Court interpreting the provision of Order 18 Rule 3 CPC has held that in the aforementioned terms.

In the instant case, it would be apt to reproduce the issue:-

“i. Whether Jagtar Singh deceased executed Will dated 31.12.1995 in favour of defendant No.1?OPD”

The respondents-defendants have led evidence, in the first instance by discharging the onus on the aforementioned issue and examined one attesting witness and scribe. The plaintiff as noticed above, examined the Hand Writing Expert in order to lend support to the averments made in the plaint. The defendants did not reserve the right to lead the evidence in rebuttal, much less, there was not a issue of rebuttal. During the stage, when the petitioner-plaintiff closed the evidence, an application dated 07.05.2015 (Annexure P-7) had been moved by the defendants seeking indulgence of the Court for appointment of expert and examination of the Will by the expert.

Since the respondents-defendants have failed to discharge the onus in affirmative, I am of the view that impugned order granting the liberty/permission to the defendants to examine the expert for the purpose of comparison of the signature on the Will of the testator, is not sustainable in the eyes of law

No doubt this Court in Kashmiri Lal Goyal' case (Supra) has exercised the discretion, in the interest of justice, by granting the permission to the parties to lead evidence in rebuttal, though there was no rebuttal

issue, but such discretion exercised would not apply as per arguments/ratio decidendi culled out in the aforementioned judgment, thus submission of Mr. Rangi, Advocate is not able to cut an ice.

In view of what has been observed above, impugned order is hereby set aside.

Revision petition is accordingly allowed.

18.09.2015

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**(AMIT RAWAL)
JUDGE**