

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

CR No. 6339 of 2015(O&M)
Date of Decision:24.09.2015

Chanchal Rani @ Rani Devi

.....Petitioner

Versus

Rajinder Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. H.S. Brar, Advocate
for the petitioner.

SNEH PRASHAR, J. (Oral)

This civil revision has been preferred by defendant No.1 against the order dated 12.08.2015 passed by learned Additional District Judge, Sangrur, whereby the application filed by defendants No. 2 and 3 under Order XLI Rule 27 CPC has been allowed.

The relevant facts emerging from the record are as under:

A civil suit for declaration, possession and permanent injunction was filed by respondent No.3- Inder Bahadur against petitioner-Chanchal Rani @ Rani Devi and respondents No. 1 and 2 Rajinder Kumar and Raj Bahadur. In his pleadings, the plaintiff assailed a will dated 20.04.1999 alleged to have been executed by deceased Somnath s/o Braham Dutt on the ground that the same is forged, fictitious, null and void. The suit was contested by the petitioner who also filed a counter claim. Respondents No. 1 and 2(defendants No. 2 and 3) also contested the suit and filed a counter claim. The trial of the case resulted in dismissal of the suit of respondent No.3-plaintiff with costs and the counter claim filed by the petitioner

respondents No. 1 and 2 (defendants No. 2 and 3) was dismissed.

The appeal against the judgment and decree dated 12.04.2012 passed by trial Court was preferred by defendants No. 2 and 3-counter claimants. During the appeal proceedings an application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure was filed by defendants No. 2 and 3-counter claimants seeking permission to examine Dr. Inderjeet Singh finger prints expert for comparison of thumb impression of Sobhraj on the Will Ex. DB with the approved/standard thumb impressions of Somnath which were admitted on other original documents proved on the file by them.

The application was allowed by the Additional District Judge, Sangrur vide order dated 12.08.2015. Aggrieved by the said order, the petitioner-Chanchal Rani/defendant No.1 (respondent No.2 in the first appeal) has preferred the instant revision.

Heard the submissions made by Mr. H.S. Brar, Advocate representing the petitioner and perused the record.

Learned counsel for the petitioner argued that the application of respondents No. 1 and 2 for adducing additional evidence could not have been allowed as it was not their case that the evidence which they intended to produce as additional evidence was not in their knowledge or could not be produced despite exercise of due diligence. Learned counsel also contended that it was no where the case of the respondents that Sobhnath and Som Nath was one and the same person. It was also not pleaded by them that father of Sob Nath was also known as Bhagwan Din @ Surya Pal. As such, it was not open to the respondents to adduce additional evidence during the appeal proceedings, which is not in consonance with their own pleadings.

There appears to be no force in the arguments of learned counsel for the petitioner. The respondents, by way of additional evidence only intend to examine a finger prints expert to prove the thumb impressions on the Will Ex. DB which is a vital and material document relied upon by them. The thumb impressions on the Will are sought to be compared with the approved/standard thumb impressions of the deceased on other admitted documents. No evidence with regard to indentivity of the deceased or his parentage etc. is to be led by the finger prints expert. The job being assigned to him is only to compare the thumb impressions on the disputed documents with the thumb impressions on some admitted documents.

The findings/reasons given by the first appellate Court while allowing the application are as under:

I have given my careful consideration to the submissions made from both the sides, it is clear that the appellants had relied upon the Will in question and it is not disputed that the Will bears thumb impressions. Although there is some dispute in regard to the indentivity of the author of the Will, but it is a fact that the science of comparison of thumb impression is near to the completion in finding a fact. In such circumstances, the prayer made by the appellants is found bona fide.

Considering the nature of dispute between the parties and for assistance of the Court as well as for complete and just decision of the case, learned trial Court has rightly come to the conclusion that the prayer made by the appellants (respondents No. 1 and 2 in the present revision) is bona

fide.

It was stated by respondents No. 1 and 2 in their application that the necessity for filing an application for additional evidence i.e. examination of finger prints expert has arisen because of the findings given by learned trial Court for discarding the Will Ex. DB. The petitioner will get due opportunity to rebut the evidence led by respondents No.1 and 2.

Thus, finding no illegality or perversity calling for interference in the order of first appellate Court the revision petition is dismissed.

September 24, 2015
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(SNEH PRASHAR)
JUDGE