

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.7270 of 2013.  
Decided on:-06.01.2015.

Sarup Singh. ....Petitioner.

Versus

Mangat Singh and others .....Respondents.

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

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Argued by:- Mr. P.S. Dhaliwal, Advocate  
for the petitioner.

Mr. Inderjit Sharma, Advocate  
for respondents No.1 to 3.

**Dr. Bharat Bhushan Parsoon, J.**

Order dated 29.10.2013 (Annexure P-2) of the lower court vide which application (Annexure P-1) of the plaintiff, petitioner herein, for producing the additional evidence was dismissed, is under challenge in this revision petition.

2. Hearing has been provided to the counsel for the parties while going through the paper book.

3. The petitioner-plaintiff wanted to examine handwriting and fingerprint expert to prove thumb impressions of deceased Jangir Singh on Will dated 10.7.1997 with his thumb impressions on a power of attorney

No.267 dated 17.11.1992 to prove that the said Will was executed by the purported testator Jangir Singh.

4. Will dated 10.7.1997 propounded by the petitioner-plaintiff is being contested throughout by the defendants, respondents herein. It is, thus, clear that the Will was to be proved by the plaintiff and if authorship of the Will was to be proved as resting with deceased Jangir Singh, it was also necessary for the petitioner-plaintiff to examine handwriting and fingerprint expert in his affirmative evidence.

5. Affirmative evidence was concluded by the petitioner-plaintiff volitionally and without any reservation of his right to lead further evidence in rebuttal after conclusion of the evidence by the respondents-defendants.

6. In ***Surjit Singh and others Versus. Jagtar Singh and others 2007 (1) RCR (Civil) 537*** it has been held by the Division Bench of this Court that Order XVIII Rule 3 CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff.

7. In yet another judgment reported as ***Jagdev Singh and others Versus Darshan Singh and others 2007 (1) RCR (Civil) 794***, it was held that the plaintiff leading evidence on issues onus of proof of which was on him, cannot be allowed to lead evidence in rebuttal on such issues if he has not reserved his right to lead such evidence earlier to beginning of evidence by the opposite party.

8. Keeping in view the totality of facts and circumstances as mentioned earlier, the application (Annexure P-1) for leading additional evidence was rightly dismissed by the lower court vide impugned order dated 29.10.2013 (Annexure P-2).

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

10. Keeping in view the nature of litigation as well as pendency of the suit since 17.4.2008, the lower court is directed to decide the same within three months from the date of receipt of certified copy of this order even by conducting day to day proceedings, if so required.

**January 06, 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