

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

**CR No. 7296 of 2013 (O&M)
Date of decision: 02.11.2015**

Manbir Kaur

... Petitioner

versus

Mehal Singh and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aseem Kalia, Advocate for the petitioner.

Mr. Shakun Chaudhary, Advocate for

Mr. Anupam Bhardwaj, LR of respondent No.1.

K.Kannan, J.

The petition is at the instance of the plaintiff who has sought for a declaration on the basis of intestate succession to the estate of Sardul Singh. The defendant set up a bequest alleged to have been executed by Sardul Singh. The defendant had examined the witnesses in purported discharge of burden of proof of the genuineness of the Will. The plaintiff sought for comparison of signatures by taking photographs of the Will with admitted thumb impressions by securing an expert testimony on the same. The Court has held that this evidence must have been given in the affirmative by the plaintiff before closing his side.

The order is wrong, for, if the document of Will is propounded by the defendant, the burden is only on the defendant who propounded the same and the Court cannot close the opportunity to the plaintiff to rebut his evidence. If according to the plaintiffs, the genuineness of thumb impressions found on the instrument will have to be tested by expert testimony, only the party will determine the quality of evidence that he brings and the Court shall not shut out such an opportunity.

The Court shall permit the expert who the plaintiff seeks to examine and allow for comparison to be made with admitted documents containing the thumb impression of the deceased Sardul Singh. The plaintiff shall be at liberty to secure the report and examine such an expert after going through the formalities of taking copies and making comparisons and giving the report.

The impugned order is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

02.11.2015
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