

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.1569 of 2014

Date of Decision:21.3.2016

Harbans Lal

---Petitioner

vs.

Ashok Kumar and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sharad Aggarwal, Advocate
for the petitioner

Mr. Hitesh Kumar Sammi, Advocate
for the respondents

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

Rekha Mittal, J.

The present petition has been directed against the order dated 21.2.2014 (Annexure P-8) passed by the Civil Judge (Junior Division), Panipat, dismissing application of the plaintiff-petitioner for examination of a handwriting expert, in rebuttal.

The petitioner has filed a suit for declaration that the Will dated

27.6.1991 and sale deeds dated 24.4.2007 and 25.4.2007 are illegal, null and void and the defendants-respondents be restrained from alienating or creating third party right in the suit property. The petitioner and respondent No. 1 are real brothers and respondent No. 2 is the wife of respondent No. 1.

Counsel for the petitioner would contend that as the onus to prove Will dated 27.6.1991 to be a genuine testament is upon propounder of the Will i.e. Ashok Kumar, respondent No. 1 and the mere fact that the trial court has not framed any issue by placing its onus upon the respondents-defendants qua legality and validity of the Will, the petitioner cannot be deprived of his right to adduce evidence to rebut the evidence adduced by the defendants qua the Will in question.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that the petitioner earlier filed an application for framing of additional issue qua the Will of which the onus is required to be placed on the defendants-respondents. The application was dismissed by the trial court and the order passed by the trial court was affirmed by the High Court. It is further argued that if the petitioner wanted to examine an expert to prove his case, he could examine an expert in his affirmative evidence. According to counsel, the petitioner cannot be permitted to adduce evidence by way of rebuttal for onus of the issue whether Will in question is wrong, illegal, null and void' has been placed upon the petitioner-plaintiff.

I have heard counsel for the parties, perused the records particularly the order impugned.

Counsel for the petitioner is not in a position to counter the submissions made by counsel for the respondents that an application filed by the petitioner for framing of an additional issue “whether the defendants became owner in possession of the suit property by virtue of Will dated 27.6.1991 OPD?” was dismissed vide order dated 11.12.2013 and the said order has been upheld in the revision petition filed before this Court. As there is no issue qua the Will in question of which the onus has been placed upon the respondents and the petitioner has already opened his case in view of the issues framed by the trial court and did not reserve his right to lead any evidence in rebuttal, no fault much less perversity can be found in the impugned order. In this view of the matter, I do not find any merit in contentions of the petitioner that the petitioner is entitled to examine an expert in rebuttal.

For the foregoing reasons, the petition is dismissed. No order as to costs.

(Rekha Mittal)
Judge

21.3.2016
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