

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2118 of 2016 (O&M)

Date of Decision.21.03.2016

Harmeet Kaur and another

.....Petitioners

Vs.

Swaranjeet Kaur and another

.....Respondents

Present: Mr. Dinesh Ghai, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The defendant is the revision petitioner before this Court.
2. In suit filed by the defendant's mother-in-law claiming right to the property under a Will said to have been executed by the petitioner's husband and the son who is the son of the plaintiff, the contention in defence was that the Will propounded by the plaintiff is forgery. The plaintiff has given her evidence and after the side was closed, the defendant has examined her witnesses including DW8 who was reported to be a handwriting expert. The expert evidence was that the signature found in the Will was a forgery and did not belong to her husband and this expert was cross-examined by one Sunil Verma on behalf of the plaintiff. Now after the defendant's side has been closed, the plaintiff has sought for production of additional evidence by examination of that Sunil Verma on the basis of new report purported to have been secured by the plaintiff that the Will was genuine. The

defendant contested the application but the Court has allowed for additional evidence to be given.

3. There is no difficulty in understanding that the person who propounds the Will will always take a burden of proof of having to assure the genuineness of the Will. Any evidence including even evidence of an expert to vouch for the genuineness must be brought as affirmative evidence. If the plaintiff did not choose to give that evidence but the defendant has produced expert's evidence that the Will propounded by the plaintiff is not genuine and signature found in the Will was not that of the defendant's husband, the matter must have ordinarily concluded there. The rebuttal evidence by plaintiff is invariably brought in matters to which the burden of proof is on the defendant and if there was no evidence to be offered against the evidence of the defendant, the Court should have been only heard arguments and concluded the case. However, the plaintiff has sought for additional evidence to be given by examining an expert to state that the Will was genuine. If the Court had exercised the discretion and allowed for the evidence to be brought not as rebuttal evidence but as additional evidence, I will not take it to afford a cause for intervention, so long as there is no illegality. It is known too well that handwriting comparison is not perfect science and the quality of evidence is weak. The Courts have held that a witness characterized as an expert who is summoned at the instance of party invariably supports the party who summons him and it will be difficult for Court to throw all its weight to uphold or reject a Will on the basis of such evidence. This precept of law must be remembered by the Presiding Officer while appreciating the nature of

evidence brought before him.

4. I will make no interference with the order already passed.

The revision petition is dismissed but with the above observations.

(K. KANNAN)
JUDGE

March 21, 2016
Pankaj*