

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3197 of 2014
Date of Decision: March 11, 2016

Ajit Singh

...Petitioner

Versus

Mohinder Kaur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Gurinder Pal Singh, Advocate,
for the petitioner.

Mr.Malkeet Singh, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the impugned order, whereby the application moved by the respondent-plaintiff for seeking assistance of the Court for examination of the Expert in rebuttal evidence, has been allowed.

Mr.Gurinder Pal Singh, learned counsel appearing on behalf of the petitioner-defendant submits that the respondent-plaintiff challenged the Will dated 15.2.2004 executed by Sadhu Singh. The parties to the lis are none else but brother and sister, in essence, the respondent-plaintiff is sister and the petitioner-defendant is the brother. When the case was listed for rebuttal and arguments, respondent-plaintiff moved an application for examination of the Expert, but the same was allowed. Once the respondent-plaintiff has lost the right to lead the evidence in affirmative, she cannot be

permitted to fill up the lacunae by leading evidence in rebuttal and, thus, prays for setting-aside of the impugned order.

Mr.Malkeet Singh, learned counsel appearing on behalf of the respondent-plaintiff submits that issue vis-a-vis the Will has not been framed, though issue No.1, which is of a wide amplitude, would contain the element of challenge to the Will also. No harm would be caused to the petitioner-defendant in case the Expert is allowed to be examined as he will have right to cross-examine him while rebutting the evidence, much less by taking the assistance of Expert and, thus, prays for dismissal of the revision petition.

It would be apt to reproduce the issues framed in the aforementioned case and as well as the prayer sought in the plaint, which read thus:-

Issues

- 1) Whether plaintiff is entitled for declaration as prayed for? OPP
- 2) Whether plaintiff is entitled for permanent injunction as prayed for? OPP
- 3) Whether plaintiff is entitled for possession of the land in dispute as prayed for? OPP
- 4) Whether plaintiff has not come to the court with clean hands? OPD
- 5) Whether plaintiff has no cause of action and locus standi to file the present suit? OPD
- 6) Whether plaintiff is estopped from filing the present suit by her own act and conduct? OPD
- 7) Relief.

Prayer clause

In view of the foregoing facts and circumstances, it is most respectfully prayed that Hon'ble Court be pleased to:

1. Pass a declaration and decree to the effect that parties to the suit are entitled to a 50% share each in the suit property of the deceased late Sadhu Singh;
2. Pass a declaration and decree in favour of the plaintiff and against the defendant for possession of the suit property or in the alternative the plaintiff is entitled to joint possession of the suit property.
3. Pass a decree and declaration to the effect that the alleged unregistered will dated 15.2.2004 is null and void and ineffective against the plaintiff and consequently the Mutation Nos.9437, 2869, 2365 and 1958 in favour of defendant are wrongly entered in the revenue records:
4. Pass a decree of permanent injunction against the defendant restraining the defendant, his attorney holder, agents, servants, successors, assigns or the like from transferring, alienating, parting with or creating a third party interest in the suit property.
5. Pass an order awarding cost of the suit in favour of the plaintiff; and
6. Pass such other order as this Hon'ble Court may deem fit.”

On conjoint reading of the prayer and the issues, it leaves no manner of doubt that the respondent-plaintiff had challenged the Will by seeking declaration, thus, the onus to prove the Will, being forged and fabricated, heavily relied upon the respondent-plaintiff and not upon the petitioner-defendant. There is no rebuttal issue, vide which the respondent-plaintiff could have sought the assistance of the Court to examine the Expert in rebuttal evidence. Had it been otherwise, in essence, the defendant had set up a Will, ofcourse situation would have been different and the plaintiff would have been entitled to lead the evidence in rebuttal through the assistance of the Expert.

The aforementioned findings of mine are also reiterated as per the ratio decidendi culled out in **Surjit Singh and others Versus Jagtar Singh and others, 2007(1) R.C.R. (Civil) 537, Avtar Singh and another Versus Baldev Singh and others, 2015(1) PLR 230 and Jagdev Singh and others Versus Darshan Singh and others, 2007(1) R.C.R. (Civil) 794.**

Keeping in view the aforementioned facts and circumstances, the impugned order allowing the application to examine the Expert in rebuttal evidence is hereby set-aside.

Revision petition stands allowed.

March 11 , 2016
ramesh

(AMIT RAWAL)
JUDGE