

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4565 of 2016 (O&M)

Date of decision:25.07.2016

Mohinder Singh

... Petitioner

Vs.

Sham Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Arun Jindal, Advocate
for the petitioner.

Mr. Vivek Suri, Advocate
for the caveator/respondent No.2 and 3.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order, dated 11.07.2016 (Annexure P-2), whereby, application seeking indulgence of the trial Court to lead additional evidence by examining the expert vis-a-vis document which bore the signature of the testator, has been dismissed.

Mr. Arun Jindal, learned counsel appearing on behalf of the petitioner-plaintiff submits that while leading evidence in affirmative, the petitioner had examined the expert, who had examined thumb impression of the testator of the sale deed of 1994. It is only in cross examination of the

defendant witnesses it surfaced that testator had executed the sale deed by appended his signatures. It is in those circumstances, evidence has come.

The trial Court has exceeded its jurisdiction, in not examining the same very expert and therefore, the application has been dismissed which would seriously prejudice the right and interest of the petitioner-plaintiff in the pending suit and thus, urges this Court for setting aside the findings rendered in the impugned order. He, thus, submits that permission may be granted to lead additional evidence.

Mr. Vivek Suri, learned counsel appearing on behalf of the caveator/respondents No.2 and 3 submits that valuable right has accrued in favour of the defendants. Issues have been framed but there is no rebuttal issue. The permission to lead additional evidence has been sought under the garb of rebuttal evidence which is not permissible in law and thus, urges this Court for affirming the findings rendered by the trial Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Jindal. For the sake of brevity, issues framed in the suit read thus:-

- “1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 3. Whether the suit of plaintiff is maintainable in the*

present form? OPP

4. *Whether the plaintiff has cause of action to file the present suit? OPD*

5. *Whether the suit of plaintiff is false, frivolous, vexatious to the knowledge of plaintiff? OPD*

6. *Relief.”*

On perusal of the issues, it is evident that there is no rebuttal issue. No doubt, the plaintiff has examined the expert by getting thumb impression of testator compared. The evidence was closed by leading evidence in affirmative and the application has been moved.

It is settled law that when there is no rebuttal issue, plaintiff cannot be permitted to lead additional evidence by taking assistance of the expert, much less, under the garb of Code of Civil Procedure. Even application is not sufficing the requirement of law, for, valuable right accrued in favour of the defendants vis-a-vis document. Moreover, prayer made in the application for examination of thumb impression on the back side of the stamp paper does not reveal whether it is of testator or not. However, the trial Court should not have given the findings on the report of the expert, much less, its veracity.

For the foregoing reasons, while affirming the findings rendered in the impugned order declining the application seeking permission to lead additional evidence, the revision petition stands dismissed.

The aforementioned findings shall not be construed as an expression of opinion on the merits of the matter. The trial Court shall decide the suit without influence of the observations rendered in this order.

(AMIT RAWAL)
JUDGE

July 25, 2016
savita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No