

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

CR No.4619 of 2014

Date of Decision:06.12.2016

GURCHARAN KAUR AND ORS

.....Petitioners

Versus

GURJANT SINGH AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Grover, Advocate
for the petitioners.

Mr. D.D. Bansal, Advocate
for respondents No.1 to 6.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed order dated 20.05.2014 passed by Civil Judge (Junior Division), Bathinda whereby objections filed by the respondents in an application to summon Handwriting and Fingerprints Expert and Namberdar in rebuttal at the instance of the petitioners were accepted and the plaintiffs were not allowed to lead expert evidence and Namberdar in rebuttal.

[2]. Plaintiffs-petitioners filed a suit for declaration challenging the Will dated 10.08.1995 allegedly executed by

Smt. Chand Kaur in favour of defendants No.1 to 3. Joint possession was also claimed as a consequential relief. Defendants No.1 to 3 were also sought to be restrained from alienating the property or creating any encumbrance by means of sale, mortgage, gift and exchange.

[3]. Both the parties led their evidence in affirmative. In rebuttal, plaintiffs sought to lead expert evidence by way of examining Harbax Singh Handwriting and Fingerprints Expert and one Namberdar namely Sukhmander Singh resident of village Pokhra, Tehsil and District Bathinda. At one point of time, requisite amount of Rs.550/- was ordered to be deposited by the trial Court vide order dated 14.03.2014. On objections raised by the defendants, impugned order came to be passed thereby declining the prayer of the plaintiffs to lead evidence in rebuttal.

[4]. Issues were framed on 19.04.2012. Issue No.1 was to the effect that

“Whether plaintiffs are entitled to declaration as prayed for? OPP.”

The onus to prove a relevant fact is always on the party who asserts in affirmative. Onus to prove issue No.1 was on the plaintiffs for which they have already led evidence in affirmative. While closing the evidence, plaintiffs did not reserve their right to lead evidence in rebuttal in respect of issue, onus of which

was on them.

[5]. I have heard learned counsel for the parties.

[6]. Learned counsel for the petitioners contended that Will dated 10.08.1995 allegedly executed by Smt. Chand Kaur is under challenge and specific issue No.4 was framed i.e:-

*“Whether the suit is barred by res
judicata? OPD”*

[7]. Learned counsel for the petitioners in view of ratio laid down in **Jaswinder Singh Vs. Smt. Rajwant Kaur and others, 2014(2) Law Herald (P&H) 1138** submitted that examination of expert witness for comparison by leading evidence in rebuttal is required to be allowed as the same was very much essential for just decision of the case.

[8]. Learned counsel for the respondents has opposed the arguments raised by learned counsel for the petitioners on the ground that issue No.1 was framed in respect of entitlement of the plaintiffs on the basis of challenge made by them against the Will. Plaintiffs cannot lead evidence in rebuttal particularly expert evidence in rebuttal in respect of issue, onus of which was on the plaintiffs themselves.

[9]. I have considered the arguments of learned counsel for the parties.

[10]. Since the earlier suit filed on the basis of Will was

compromised between the parties and the plaintiffs have mentioned the aforesaid fact in para No.8 of the plaint, therefore, the Will was very much in the knowledge of the plaintiffs at the time of leading evidence in affirmative.

[11]. In **Surjit Singh and others Vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537 DB**, the Division Bench of this Court while interpreting Order 18 Rule 3 CPC examined the scope and ambit of right of the plaintiff to lead evidence in rebuttal on an issue, the onus of which was upon plaintiff. It was held in negative. The ratio of **Surjit Singh and others' case (supra)** was subsequently followed in **Jagdev Singh and others Vs. Darshan Singh and others, 2007(1) RCR (Civil) 794** and **Avtar Singh Vs. Baldev Singh, 2015(1) PLR 230**. Mere allowing the application to deposit the requisite amount for summoning the witnesses does not give any valuable right to the plaintiffs for examining the witnesses in rebuttal.

[12]. In **Ram Kumar Vs. Raj Kumar and others, 2014(3) CivCC 453**, it was held by this Court that Handwriting Expert cannot be allowed to be examined in rebuttal and even cannot be allowed to be examined by way of additional evidence as this was well within the knowledge of the petitioners at the time when they were leading evidence in affirmative.

[13]. In view of aforesaid, I find no justification in granting

any indulgence on the issue any further. This revision petition is accordingly dismissed.

06.12.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No