

CR-5055-2015

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

CR-5055-2015 (O & M)

Date of Decision: 08.02.2016

Neeraj Dhiman

... Petitioner(s)

Versus

Indu Bhatia and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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. R.S.Bajaj, Advocate,
for the petitioner.

Mr. Sandeep Banal, Advocate,
for respondent No.1.

Mr. Jatin Salwan, Advocate,
for respondent No.3.

Paramjeet Singh Dhaliwal, J. (Oral)

CM-1865-CIL-2016

Allowed, as prayed for. Affidavit of respondent No.3 is
taken on record.

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Instant civil revision has been filed under Article 227 of the
Constitution of India for setting aside the order dated 14.07.2015
(Annexure P-5) passed by learned Civil Judge (Jr. Divn.), Hoshiarpur

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whereby application for leading additional evidence filed by the petitioner has been dismissed.

Brief facts of the case are to the effect that respondent No.1-plaintiff filed suit for partition and for separate possession of her 1/5th share in the property in dispute and also for the relief of permanent injunction restraining the defendants i.e. petitioner and proforma respondents herein from changing the nature of the property and also for declaration to the effect that sale deeds dated 01.09.2009 are illegal, void and liable to be set aside. Upon notice, the defendants filed written statement. On the basis of pleadings of parties, issues were framed and parties led their respective evidence. In rebuttal evidence, respondent No.1-plaintiff produced certified copy of report of Mr. Arvind Singh, handwriting expert from a criminal case titled as 'Indu Bhatia vs. Neeraj Dhiman' pending in the Court of Ms. Ekta Uppal, JMIC, Hoshiarpur and examined Mr. Arvind Sood as PW 3 to prove the said report dated 30.03.2013 regarding the Will dated 10.03.1998. Thereafter, the petitioner along with others moved application seeking permission to examine handwriting expert to rebut the report of handwriting expert produced by the plaintiff regarding the Will dated 10.03.1998 and to prove on file the report of Director Forensic Science Laboratory, Punjab regarding the said Will, by way of additional evidence. The said application has been dismissed vide impugned order dated 14.07.2015 (Annexure P-5). Hence, this revision.

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I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contends that the report dated 13.05.2010 of FSL, Punjab is a public document whereby Will dated 10.03.1998 has been examined for comparison. Since the report of FSL has already been exhibited on record in criminal proceedings pending between the same parties and same is required to be proved being admissible in evidence, the petitioner wants to place on record the same which is otherwise necessary for the just decision of the case and also wants to examine the handwriting expert to rebut the report of handwriting expert examined by the plaintiff.

Per contra, learned counsel for respondent No.1 vehemently opposes the exhibiting of FSL report on record.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, the Will dated 10.03.1998 has already been examined in criminal proceedings initiated at the instance of respondent No.1. In those proceedings, the report of handwriting expert with regard to the Will has been exhibited as Ex.PW 3/B. Be that as it may, the Civil Court shall independently decide the civil suit because validity of Will is involved. Keeping in view the facts and circumstances of the present case and also the fact that the same very document has already been examined, the report of handwriting expert can be taken into

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consideration. The contention of learned counsel for respondent No.1 that this can be done only to the extent of placing on record the report of FSL, not beyond that. However, mere placing the document on record would not serve the purpose of leading additional evidence because document is required to be proved in accordance with law and opportunity for rebutting and testing its veracity is required to be given to the opposite party.

Keeping in view the above, instant revision is allowed and the impugned order dated 14.07.2015 (Annexure P-5) is set aside. The petitioner is allowed to place on record the report of FSL, Punjab, Chandigarh regarding the Will and examine the expert witness to prove that report by way of additional evidence. Respondent No.1 will be at liberty to cross-examine the witness in accordance with law. Thereafter, the trial Court will have to draw inference in accordance with law.

08.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge