

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 499 of 2014
Date of decision : April 7, 2016

Krishan Lal

..... Petitioner

Versus

Rajrani and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Zorawar Singh, Advocate
for respondent No. 1.

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?

Amit Rawal, J (oral).

The petitioner-plaintiff instituted a suit for injunction seeking restraint order against the defendants qua possession and the same was contested by the defendants by filing written statement and also set up counter claim challenging the Will alleged to have been executed by natural ancestor namely Rochi Ram on 13.2.2001. In support of their assertion made in order to discharge the burden viz-a-viz challenge to the Will, examined an expert but the appellant who is petitioner-plaintiff herein and defendant in the counter claim has been denied right to lead evidence on the ground that there is no issue of rebuttal on the premise that once a specific stand in the written statement qua the Will has been taken, plaintiff was required

to lead evidence in affirmative, thus, urges this Court for setting aside the impugned order.

Learned counsel appearing on behalf of respondent No.1 submits that only issue in the suit has been framed i.e. there are no separate issues qua counter claim and rightly so the trial court denied opportunity to the plaintiff to lead evidence in rebuttal. There is no illegality and perversity in the impugned order.

I have heard learned counsel for the parties, appraised the paper book and of the view that the plaintiff would be a defendant in the counter claim and in case the counter claimant leads evidence in affirmative qua the Will, the plaintiff, defendant in the counter claim cannot be denied right of assistance of an expert in discharging the onus, as counter claim is an independent suit. In such like situation, proving the Will is a mixed question of law would not apply. Preventing the plaintiff-defendant in counter claim to lead evidence, would lead to miscarriage of justice.

Keeping in view the aforementioned facts, the impugned order is hereby set aside. The petitioner, defendant in counter claim is granted liberty to lead evidence as sought.

Accordingly the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 7 , 2016
archana