

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

Civil Revision No.6540 of 2016

Date of Decision: 06.10.2016

Tejpal

.....Petitioner

Vs

Jagmal and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. K.P.S. Virk, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. In this revision petition, petitioner has challenged the order dated 14.09.2016 passed by Civil Judge (Jr. Divn.) Kurukshetra whereby the application for leading additional evidence was dismissed by the trial Court.

[2]. Brief facts as gathered from the record are that the plaintiffs Satpal and Tejpal filed a suit for declaration with consequential relief of permanent injunction against Jagmal/respondent No.1. Puran Chand was the father of the parties and was owner of the suit land. Plaintiffs alleged that Puran Chand distributed the property amongst his sons. The share of the defendant was given to him by making cash

payment and the defendant had purchased a house. Puran Chand executed a Will dated 11.07.2007 in favour of the plaintiffs in the presence of witnesses. The Will was scribed at the instance of Puran Chand by Deed Writer, which was duly witnessed by Rajinder Kumar and Mahender Pal. The Will was also attested by Sh. Yodh Raj Bansal, Advocate and Notary Public, Kurukshetra on the identification of Sh. Attar Singh, Lambardar. Puran Chand was residing with the plaintiffs and the plaintiffs were serving him. Defendant was having strained relationship with Puran Chand.

[3]. Puran Chand died on 12.07.2007. Plaintiffs alleged that after the death of Puran Chand, they became owner of the suit property in equal shares on the basis of Will. It was also alleged that the defendant cleverly got mutation sanctioned in his name and in the names of plaintiffs as well in the revenue record. Mutation was sanctioned on 06.09.2010. Even after contest by the plaintiffs, the order of Assistant Collector, Ist Grade Thanesar sanctioning the mutation vide order dated 06.09.2010 was upheld by the Collector in Appeal on 17.08.2011. The said orders passed by the revenue officials were also challenged in the suit being illegal, null and void. In nutshell, plaintiffs staked their claim on the basis of Will dated 11.07.2007 executed by Puran Chand, father of the parties.

[4]. Plaintiffs filed an application for additional evidence on the premise that Puran Chand had mortgaged land measuring 22 *Kanals* 16 *Marlas* registered vide mortgage deed dated 25.09.1998 by affixing his thumb impressions. All the attesting witnesses of the document have already expired, therefore, the plaintiffs pleaded that it was necessary for them to prove the thumb impression of Puran Chand. Plaintiffs have got compared the thumb impression of Puran Chand appearing on mortgage deed and the Will from Handwriting Expert namely Sunil Verma. The original mortgage deed was lying in the office of Head Registration Clerk, Kurukshetra. The plaintiffs could not produce the Expert while leading their affirmative evidence.

[5]. Defendant contested the application on the ground of maintainability alleging that the document dated 25.09.1998 was put to the defendant in the cross-examination on 26.05.2016 and the defendant had already denied the photo of his father on the alleged mortgage deed. The attested copy of the same was marked as 'PG' and the same could not be got exhibited. A certified copy of the document was available with the plaintiffs at the time of leading evidence in affirmative, but they did not opt to prove the same for the reasons best known to them.

[6]. No attesting witnesses viz. Deed Writer, witness from

the office of Sub-Registrar and attesting witnesses of the documents were examined in affirmative evidence. The mortgage deed could not be proved on record. The comparison of thumb impressions on the alleged mortgage deed with that of Will cannot arise in the aforesaid circumstances. The thumb impression appearing on the mortgage deed cannot be presumed to be admitted thumb impression of Puran Chand as the document itself was not proved on record.

[7]. The expert evidence by way of additional evidence that too for comparison of thumb impression of Puran Chand on the mortgage deed as well as on the Will cannot be allowed at this stage, as such type of evidence was required to be led in affirmative. Even otherwise, the evidence cannot be permitted as the alleged thumb impression on the mortgage deed cannot be taken to be an admitted thumb impression for want of proof of execution of mortgage deed itself.

[8]. The plaintiff/petitioner had knowledge of the document in question on 18.02.2016, however despite the same, the execution of the document was not proved by the plaintiff/petitioner despite number of adjournments. Thereafter, the evidence of the plaintiffs was closed by the statement of their counsel on 12.05.2016.

[9]. At this juncture, no such indulgence can be granted, particularly in view of facts and circumstances of the case. Consequently, this revision petition is totally found to be bereft of the merits and the same is accordingly dismissed.

October 06, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No