

Civil Revision No.6747 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.6747 of 2016

Date of Decision: 6.10.2016

Avtar Singh

---Petitioner

versus

Gurmeet Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sandeep Verma, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition has been directed against order dated 22.9.2016 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Nabha, whereby application filed by the petitioner/defendant under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure (in short "CPC"), has been dismissed.

The respondent/plaintiff has filed a suit for declaration that she is owner in possession of the suit land being sole legal representative of Mohinder Singh since deceased and the Will purported to be executed by Mohinder Singh on 27.6.2012 in favour of defendant Nos. 1 and 2 and got registered by them after death of Mohinder Singh vide Vasika No. 236 on 7.9.2012 is illegal, null and void, forged, fabricated and result of fraud and misrepresentation. Further challenge has been laid to mutation No. 983 of village Dhundewal and 1552 of village Pedhan, Tehsil Nabha entered on the basis of aforesaid Will. She has also prayed for consequential relief of permanent injunction restraining the defendants from alienating/transferring the suit property and interfering in her peaceful possession.

Respondent/plaintiff has already adduced her evidence. The instant application was filed by the petitioner/defendant on the plea that the defendants have examined Dr. Inderjit Singh DW-4 who compared signatures of Gurmeet Kaur plaintiff on Will dated 27.6.2012 and at the time of registration of the Will on 7.9.2012 marked Q1 and Q2 rmeet Kaur plaintiff on the statement made at the time of registration of the Will on 7.9.2012.

Counsel for the petitioner has submitted that the respondent/plaintiff has examined Sh. Navdeep Gupta, Document and Finger Prints Expert, Patiala who has given his report qua purported signatures of Gurmeet Kaur on the Will dated 27.6.2012, at the time of registration of the Will on 7.9.2012 as well as her signatures on statement dated 7.9.2012 marked Q3 and Q4 but as the expert examined by the petitioner did not compare the signatures of Gurmeet Kaur on the statement recorded on 7.9.2012, a serious prejudice would be caused to the petitioner in case he is not permitted to get filed a supplementary report of Dr. Inderjit Singh regarding comparison of signatures of Gurmeet Kaur appended on her statement dated 7.9.2012. It is further submitted that as rules of procedure are handmaid of administration of justice and fair opportunity is required to be given to the parties, impugned order may be set aside and the petitioner may be allowed to get filed supplementary report of Dr. Inderjit Singh and to recall him in the witness box for proving the said report.

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

The present application has been filed by the petitioner under Order 18 Rule 17 read with Section 151 CPC. The trial court in the

impugned order has mentioned that provision of Order 18 Rule 17 CPC has been deleted by way of amendment but the same is not correct. The provision which has been deleted by way of amendment is Order 18 Rule 17-A CPC that provided for additional evidence to be adduced by a party. In the case at hand, Dr. Inderjit Singh has already been examined as a witness on behalf of the petitioner and he has been sought to be recalled for further examination by invoking Order 18 Rule 17 CPC. A relevant extract from Order 18 Rule 17 CPC, reads as follows:-

“Court may recall and examine witness.- The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

It appears that this power can be exercised by the Court on its own motion or on an application filed by a party to the litigation but in the case at hand, the petitioner has sought permission of the Court for filing of a supplementary report by the Handwriting expert and such a prayer, by no stretch of imagination, is covered under the purview and ambit of Rule 17, reproduced hereinbefore. In this view of the matter, no intervention in the

impugned order is justified.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

6.10.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No