

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

CR No.719 of 2015 (O&M)

Date of decision:20.12.2016

Charan Indra Singh alias Singh Charan Indra

... Petitioner

Vs.

Balwant Singh and others

... Respondents

CR No.7564 of 2014 (O&M)

Balwant Singh (deceased through LRs)

... Petitioner

Vs.

Charan Indra Singh alias Singh Charan Indra

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Deepak Bhardwaj, Advocate
for the petitioner in CR No.719 of 2015 and
for the respondent in CR No.7564 of 2014.

Mr. Arun Jindal, Advocate
for the petitioner in CR No.7564 of 2014 and
for the respondent in CR No.719 of 2015.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two revision petitions bearing No.719 of 2015 at the instance of the plaintiff against the order seeking leave of the Court to examine the handwriting expert qua writing dated 7.1.1987 at the stage of rebuttal and final arguments when the defendant was leading evidence, has been declined and revision petition bearing No.7564 of 2014 is at the instance of the defendant, whereby, the

application moved by the plaintiff for producing the aforementioned document by way of secondary evidence has been allowed without complying with the statutory provisions of law regarding its existence and loss.

Mr. Deepak Bhardwaj, learned counsel appearing on behalf of the petitioner submits that the claim in the suit was, seeking following declaration:-

“Suit for declaration to the effect that the plaintiff is owner and in possession of House No.8, Friends Colony, Near 22 Numbers Phatak, Patiala on the basis of a Family Partition of the suit property having Municipal Corporation Property No.8750/5-11, fully shown in the site plan attached, total measuring 710 square yards having khewat/khatouni no.858/1611 and having khasra no.473/104 situated in the Revenue Limits of village Lehal which is bounded as under:-

East H.No.10 of Mr. Rajiv Ohri

West Road

North Road

South House of Sh. Varinder Bains & T.P.Sehgal

AND suit for mandatory injunction for giving proper and necessary direction to the defendant No.1 that he may execute the registered sale deed of the suit property in favour of the plaintiff as it is already settled/decided in the Family Partition.

AND suit for permanent injunction restraining the defendants, their agents, servants, supporters and partymen and anybody else on their behalf from alienating and interfering into the peaceful, continuous, physical uninterrupted possession of the plaintiff over the suit property in question fully mentioned in the heading of the plaint, as the defendant has no right, title, interest, concern or authority over the suit property.”

There is a specific averment with regard to the writing dated 07.01.1987. The defendant in the written statement did not specifically deny of having not appended the signatures on the writing, rather vague denial and stated to be forged and fabricated was taken. It was only when the defendant denied the same in the evidence, the application aforementioned was moved but the same has erroneously been dismissed. Our Court, as per the amendment caused in Order XVIII Rule 2 CPC adopted the amendment caused by Madras High Court granting jurisdiction to the Court for the reasons to be recorded in writing to direct any party to examine any witnesses at any stage. No harm would be caused as per the aforementioned amended provisions of law.

As regard other revision bearing No.7564 of 2014, Mr. Deepak Bhardwaj, Advocate submits that application for secondary evidence has been moved. There is categoric averment in the plaint that original writing was in possession of the defendant which was though denied and in the absence of the same, moving of an application is itself a notice, i.e., compliance of Section 66 of Indian Evidence Act, therefore, the Court

below has rightly allowed the application.

Mr. Arun Jindal, learned counsel appearing on behalf of the defendant submits that in view of the ratio decidendi culled out by the Hon'ble Division Bench of this Court in **Surjit Singh and others vs. Jagtar Singh and others 2007(1) RCR (Civil) 537; Jagdev Singh and others vs. Darshan Singh and others 2007(1) RCR (Civil) 794** and **Avtar Singh and another vs. Baldev Singh and others 2015(1) PLR 230**, in the absence of rebuttal evidence, moving of the application seeking leave of the Court for examining the handwriting expert is impermissible. There is no rebuttal issue. Once there is categoric denial to the writing, as the pleadings have to be precise which can be elaborated during the evidence, nothing prevented the plaintiff to lead the evidence in affirmative. Thus, the order under challenge declining the relief for examination of the expert is totally legal, justified and thus, upheld.

As regard, other impugned order, he submits that trial Court has allowed the application in most fallacious and perverse manner as statutory provisions of Section 65 of the Indian Evidence Act have not been taken care of, i.e., regarding loss and existence.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bhardwaj, in CR No.719 of 2015, for, as per the ratio decidendi culled out in above mentioned judgments, in the absence of rebuttal issue, the party cannot be permitted to lead evidence in rebuttal to

take the assistance of the Court. Once there is emphatical denial, according to the plaintiff, it may be vague but required to lead evidence in affirmative. Even the aid of Order 18 Rule 2 CPC or Order 18 Rule 17 CPC cannot be taken as it would tantamount to circumventing the settled provisions of law. Thus, the order under challenge cannot be said to be perverse and erroneous. Accordingly, the impugned order in CR No.719 of 2015 is upheld.

Resultantly, CR No.719 of 2015 is dismissed.

As regards revision petition No.7564 of 2014, I am of the view that the trial Court ought not to have allowed the application in blanket manner and should have kept open question vis-a-vis existence and loss of document. Until and unless, the plaintiff is permitted to lead evidence by proving loss or existence, the secondary evidence cannot be permitted, therefore, the order under challenge in CR No.7564 of 2014 is modified to the extent that before secondary evidence is permitted. The petitioner shall in first instance lead evidence qua existence and loss of the writing dated 07.01.1987.

Revision petition bearing No.7564 of 2014 stands disposed of.

(AMIT RAWAL)
JUDGE

December 20, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No