

CM-1746-CII-2016 in/and CR-7349-2014

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

**CM-1746-CII-2016 in/and
CR-7349-2014**

Date of decision : 02.02.2016

Katha Singh

... Petitioner

Versus

Pritam Kaur and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sharad Mehra, Advocate
for the applicant/petitioner.

Mr. Sagar Aggarwal, Advocate
for respondents No.1,2 & 4.

REKHA MITTAL. J.

CM-1746-CII-2016

Prayer in this application is for recalling order dated 19.01.2016 whereby the petition has been ordered to be dismissed.

Counsel for the respondents has got no objection if the prayer is allowed.

In view of averments made in the application supported by an affidavit of Sh.Sharad Mehra, Advocate, submissions made by counsel for the applicant and no objection by counsel for the respondents, the application is allowed, order dated 19.01.2016 is recalled and the

petitioner is ordered to be restored at its original number and stage.

CR-7349-2014

The present petition has been directed against the order dated 16.10.2014 passed by the Civil Judge (Junior Division), Tarn Taran, dismissing application of the petitioner for additional evidence.

The petitioner filed a suit for declaration that he is owner of 1/4th share in the land detailed in the plaint on the basis of Will dated 15.02.2008 executed by Kashmir Singh son of Mukhtiar Singh, registered on 20.07.2010. Further prayer is made to restrain defendants No.1 to 3 from alienating the share of the plaintiff. Kashmir Singh, the original owner of the land passed away on 20.06.2008.

Counsel for the petitioner contends that the respondents filed a petition CRM-M-15909 of 2013 'Sukhwinder Kaur Vs. State of Punjab and others' wherein SSP, Tarn Taran was directed to make an enquiry as to whether Kashmir Singh (deceased) was putting signatures on the documents or not. It was found during inquiry that Kashmir Singh had been putting his signatures on documents in the Military Hospital. Opinion of Forensic Expert Sukhjinder Singh was obtained in regard to signatures of Kashmir Singh on Will dated 15.02.2008 and the documents i.e. ECHS form dated 09.04.2008 and affidavit dated 25.03.2008 and the said expert submitted a report.

The petitioner filed an application for adducing additional evidence to prove the inquiry report of SHO and report of handwriting

expert but the same has been disallowed by the trial Court without adverting to the question if the documents are material for just decision of the case or otherwise. It is further argued that mere fact that the petitioner earlier availed certain opportunities to lead evidence cannot be allowed to create an obstacle in his way to produce additional evidence which came to his knowledge subsequent to his closing the evidence on 25.03.2014.

Counsel for the respondents has supported the impugned order with the submissions that the trial Court has noticed that the petitioner availed near about 15 opportunities before closing his evidence on 25.03.2014. He filed another application for additional evidence on 17.04.2014 which was partly allowed on 18.07.2014. Subsequent thereto, the petitioner again availed five more opportunities to conclude additional evidence and in the meantime filed the instant application to lead additional evidence. It is argued that conduct of the petitioner in filing applications in quick succession certainly indicates that the petitioner is hell bent to cause maximum harassment to the respondents.

I have heard counsel for the parties and perused the records.

Counsel for the respondents has not disputed that the inquiry report of the SHO dated 03.02.2014 and report of the Handwriting Expert sought by the police during inquiry conducted in pursuance of the directions issued by this Court in CRM-M-15909 of 2013 came into existence during pendency of the civil suit. The mere fact that the petitioner earlier filed an application for additional evidence which was

partly allowed by the Court cannot be taken as a valid ground to dismiss the present application for additional evidence.

Counsel for the respondents has not made any submission that evidence sought to be adduced by way of additional evidence is not relevant and material for adjudication of the matter in controversy.

The learned trial Court has observed that the Will cannot be proved by proving the inquiry report given by a police officer or the report of an expert sought by the police.

It may be true that the inquiry report prepared by the SHO and the report given by an handwriting expert may not be sufficient to discharge the onus, rests upon the petitioner to prove the Will propounded by him but it cannot be said that inquiry report and expert report are not at all relevant for adjudication of the matter in controversy. As a matter of fact, in my considered opinion, the learned trial Court was mainly swayed by the number of opportunities already allowed to the petitioner to lead his evidence initially as well as additional evidence, to reject his prayer for additional evidence. As both the documents came into existence in pursuance of the directions issued by this Court in a petition filed by the respondents and the documents appears to be relevant in the present context, the petition is allowed and the petitioner is permitted to produce additional evidence to prove the inquiry report dated 03.02.2014 and report of the expert dated 26.10.2013, subject however, that the petitioner shall get two effective opportunities to adduce additional

evidence allowed by this Court. The petitioner shall be liable to pay an amount of ₹10,000/- as costs to compensate the opposite party for delay.

(REKHA MITTAL)
JUDGE

February 02, 2016.
Davinder Kumar