

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

-.-

Civil Revision 8097 of 2016
Date of decision: 06.12.2016

Surinder Saini

..... Petitioner

Versus

Simmi Saini and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Onkar Singh, Advocate
for the petitioner

-.-

Rekha Mittal, J.

The present petition directs challenge against order dated 03.11.2016 (Annexure P1) passed by the Civil Judge (Junior Division) Hoshiarpur whereby application (Annexure P7) for examining handwriting and finger prints expert in rebuttal evidence has been disallowed.

Counsel for the petitioner has submitted that the petitioner has filed a suit for declaration claiming ownership of the property in dispute being the sole legal heir of Smt. Chanan Kaur on the basis of Will dated 24.04.2000. The petitioner adduced evidence in support of her claim set up in the plaint. Simmi Saini-respondent No. 1 examined handwriting expert Shri Arvind Sood to prove Will dated 01.02.2001 and also got produced bank records containing thumb impression of Smt. Chanan Kaur and the handwriting expert prepared a report on the basis of comparison of disputed thumb impression of Smt. Chanan Kaur in the register of deed writer dated 01.02.2001 and thumb impression available in the bank record. It is argued

that as the bank record was produced before the Court in the course of evidence adduced by respondent No. 1, there was no occasion for the petitioner/plaintiff to get compared thumb impression of Smt. Chanan Kaur on the disputed Will with the Bank record, therefore, she is required to be given an opportunity to seek necessary comparison from handwriting expert and examine him in rebuttal evidence.

I have heard counsel for the petitioner and perused the paper book containing various annexures including the order impugned.

The learned trial Court dismissed the application in view of observations recorded in para 7 of the order, extracted here-in-below:-

“.....it transpires that similar application was moved by applicant/plaintiff that has already been dismissed by this Court on 02.08.2016. No new issue in rebuttal has been framed in this case. There was ample opportunity with applicant/plaintiff to get the thumb impression of Chanan Kaur examined from handwriting and finger prints experts. Defendant/respondent No. 1 had already led evidence on the basis of her pleadings taken in written statement.....”

It is an undisputed position of the case that prior to filing of the present application dated 07.09.2016 (Annexure P7), the petitioner filed another application seeking permission for comparison of thumb impression of Smt. Chanan Kaur which was decided by the trial Court vide order dated 02.08.2016 (Annexure P6). In para 2 of order dated 02.08.2016, the Court has noticed that the application was filed by the petitioner on the plea that defendant No. 1 has examined handwriting expert Shri Arvind Sood to prove Will dated 01.02.2001. Defendant No. 2 produced on record certified copy of gift deed dated 02.07.2001 registered on 03.07.2001.

Plaintiff/applicant wants to bring on record report of handwriting and finger prints expert for comparison of standard thumb mark of Chanan Kaur on registered Will dated 24.04.2000 and registered gift deed dated 03.07.2001 for comparison with disputed thumb impression of Chanan Kaur on the deed writer register dated 01.02.2001 in rebuttal evidence. It is also not denied that the earlier application was filed by the petitioner after both the defendants have already adduced their evidence and the case was fixed for producing evidence in rebuttal by the petitioner/plaintiff. The petitioner cannot be permitted to file successive applications for seeking the same relief for examining handwriting expert on the basis of comparison. As per the settled position in law, principle of *res judicata* applies to different stages of proceedings in the same suit. As the application filed by the petitioner for permission to examine handwriting expert in rebuttal evidence has already been declined by the trial Court vide order dated 02.08.2016 that has attained finality, no error much less perversity can be noticed in the impugned order warranting intervention.

To be fair to the petitioner, counsel has referred to judgment of this Court ***Jaswant Singh vs. Jagjit Singh, PLR Vol. CLXXXIII (2016-3)***

15. The referred authority has got no bearing on the facts of the case in hand in view of discussion made hereinbefore.

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

(Rekha Mittal)
Judge

06.12.2016
mohan bimbra

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