

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

CR No. 1231 of 2015(O&M)

Date of decision: 17.11.2017

Atma Ram and others

....Petitioners

VERSUS

Som Nath and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjiv Gupta, Advocate for the petitioners.

Mr. R.S. Randhawa, Advocate for the respondents.

REKHA MITTAL, J.

The present petition directs challenge against order dated 04.02.2015 passed by the Additional Civil Judge (Senior Division) Dera Bassi whereby application filed by the petitioners/plaintiffs for additional evidence has been dismissed.

A brief backdrop of the case is that the petitioners have filed a suit for declaration to the effect that they are joint owners in possession to the extent of half share in land measuring 35 bighas 19 biswas, detailed in head-note of the plaint and the unregistered Will dated 19.10.2003 and mutation No.579 sanctioned on the basis of said Will are illegal, null and void and not binding qua rights of the plaintiffs with relief of permanent injunction. The petitioners adduced evidence to establish their plea and discharge onus of issues No.1 to 4 and 7, placed upon the petitioners. After evidence of the petitioners was concluded, the respondents/defendants adduced their evidence to prove the Will dated 19.10.2003. Subsequent

thereto, the instant application was filed for adducing additional evidence by comparing the thumb impressions of Achhru Ram on the resolution dated 08.01.1994 passed by the Gram Panchayat Punsar, Block Dera Bassi with the unregistered Will dated 19.10.2003 purported to be executed by Achhru Ram son of Sh. Jassa Ram.

After reply to the application filed by the respondents/defendants and having heard counsel for the parties, application was dismissed by the trial Court vide order impugned. The trial Court has held that the plaintiffs have already led and concluded their evidence on the issue that the Will dated 19.10.2003 is a forged and fabricated document and allowing the application at this stage will cause serious prejudice to the interest of the defendants. The applicants have not disclosed as to when they got knowledge of resolution dated 08.01.1994 which was passed much before filing of the present suit and conclusion of plaintiffs' evidence. The said document was not put to any of the defendant's witnesses. There is no provision in CPC which provides for additional evidence as Order 18 Rule 17-A has been omitted from the CPC w.e.f 01.07.2002.

Counsel for the petitioners has assailed the impugned order primarily on two counts. The first submission made by counsel is that the trial Court framed issue No.5 with regard to the Will in question and onus of the said issue has been placed upon the defendants. It is argued that the petitioners closed their evidence in affirmative, therefore, they have the right to lead evidence by way of rebuttal to the evidence adduced by the defendants to discharge onus of issue No.5 qua the Will in question. The second submission made by counsel is that while adducing evidence by the petitioners/plaintiffs, they could not anticipate as to what evidence would

be led by the respondents/defendants to prove the Will propounded by them, therefore, a serious prejudice is likely to be caused to the petitioners/plaintiffs in case they are not permitted to examine the handwriting expert to rebut the evidence qua the Will.

Counsel representing the respondents has supported the impugned order with the submission that as the petitioners did not reserve their right to lead evidence in rebuttal even qua the issue(s) of which the onus has been placed upon the respondents/defendants, they cannot be allowed to lead additional evidence which could be led in rebuttal in respect of issue No.5. Another submission made by counsel is that the document i.e. resolution dated 08.01.1994 sought to be used for the purpose of comparison of disputed thumb impressions on the Will dated 19.10.2003 has seen the light of day for the first time when the petitioners filed the instant application at the fag end of trial. It is argued with vehemence that as the respondents/defendants have neither admitted this document nor the petitioners have proved the document in accordance with law, there is no occasion for any such permission to adduce additional evidence on the basis of alleged comparison by the so-called handwriting expert.

Counsel for the petitioners failed to give any positive response with regard to status of the document dated 08.01.1994, in compliance with order dated 16.11.2017 passed by this Court.

I have heard counsel for the parties, perused the paper-book particularly various annexures available on record.

Counsel for the petitioners has urged that the petitioners closed their evidence in affirmative and that amounts to reserving their right in rebuttal. There is nothing on record suggestive of the fact that the

petitioners closed their evidence in affirmative much less having reserved their right to lead evidence in rebuttal qua the issue(s) of which the onus has been placed upon the contesting party. There is no challenge to the factual observations made by the trial Court that the plaintiffs have already led and concluded their evidence on the issue that the Will dated 19.10.2003 is a forged and fabricated document. In this view of the matter, I find merit in contention of the respondents that the petitioners cannot be permitted to adduce evidence by way of rebuttal to the evidence led by the respondents/defendants on the question of Will. However, in the case at hand, the petitioners have not prayed for examining the expert by way of rebuttal but they have sought to examine the witness by way of additional evidence. In para 3 of the application, it is mentioned that the applicant was not in the knowledge of resolution No.2 dated 08.01.1994 during his evidence but now he has got the aforesaid document. It has not been averred as to how and from where & whom the plaintiffs got the said document dated 08.01.1994. There is nothing on record to controvert plea of the respondents that the document dated 08.01.1994 was not a part of records prior to filing of instant application at the fag end of trial. As the petitioners have not proved resolution dated 08.01.1994 in accordance with law nor sought any permission for proving this document, there was no occasion for the trial Court to permit the petitioners to adduce additional evidence on the basis of comparison of the disputed Will with the alleged thumb impressions of Achhru Ram on the document dated 08.01.1994. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs. Nothing stated

hereinbefore shall cause prejudice to either of the parties at the time of final adjudication of the suit on merits.

NOVEMBER 17, 2017		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no