

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

CR No.1271 of 2016

Date of Decision: 17.07.2017

Dharam Singh

.....Petitioner

Versus

Labh Singh and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Vijay Sharma, Advocate
for the petitioner.

Mr. Ramandeep, Advocate
for respondents No.2 and 3.

RAJ MOHAN SINGH, J.(ORAL)

Petitioner has filed this revision petition against the order dated 02.02.2016 passed by Civil Judge (Junior Division), Samana, vide which prayer for leading evidence in rebuttal was dismissed.

Plaintiff filed a suit for joint possession of land measuring 25 kanals, 12 marlas along with declaration and permanent injunction on the basis of natural succession. Defendants appeared in the Court and filed their written statement in which they relied upon unregistered Will dated 17.05.1996. The issue was framed, the onus of which was fastened upon the defendant i.e.

“Whether the Will dated 17.05.1996 was executed by Niranjn Singh son of Sewa Singh in favour of defendants No.2 and 3? OPD”

Apparently, the onus of the issue was on the defendants and therefore, the plaintiff has a right to rebut the same in his rebuttal. It is not a situation where the plaintiff wants to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself. Here is a case, where defendants have set up an unregistered Will in their written statement and necessary issue was framed, thereby putting the onus on the defendants themselves to prove the issue in question.

Therefore, in my considered opinion, the plaintiff has a right to lead evidence in rebuttal in respect of an issue, the onus of which was on the defendants. Secondly, the plaintiff-petitioner wants to summon an official from the office of Sub Registrar in order to counter the plea of the defendants that the Registrar was not present at the time of alleged visit of the defendants for registration of the Will in question. In my considered opinion, on both the counts, the plaintiff has a right to lead evidence in rebuttal.

Learned counsel for respondents No.2 and 3 at last pointed out that an application under Section 65 of the Evidence Act for bringing on record the secondary evidence of the Will in question was allowed, therefore, no expert opinion can be given on the basis of photostat copy of the original Will, which was

allowed to be tendered in evidence.

In view of observations made by this Court in **Harbans Singh and others Vs. Jagir Singh and others, 2006(1) PLJ 84**, the photocopy of the document can be subjected to expert opinion, if the signatures/thumb impressions appearing on the document are apparent. The best evidence available with the party cannot be shut out on the preposterous plea that the comparison cannot be made on the basis of photocopy of the document.

In view of above, I am of the view that the impugned order dated 02.02.2016 passed by Civil Judge (Junior Division), Samana is not legally sustainable and the same is accordingly set aside. Consequently, this revision petition is allowed. Petitioner is held entitled to lead evidence in rebuttal.

Both the parties are directed to appear before the trial Court on the adjourned date.

17.07.2017

prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No