

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

CR No.1088 of 2017.

Date of Decision: 17.05.2017.

Ram Singh

....Petitioner.

VERSUS

Surat Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Amit Arora, Advocate for the petitioner.

SNEH PRASHAR, J.

Assailing the order dated 02.01.2017 passed by learned Civil Judge (Junior Division), Patti, District Tarn Taran by virtue of which the application under Section 151 of the Civil Procedure Code (for short, 'CPC') filed by the petitioner-defendant No.1 for discarding the evidence of respondents No.1 and 2-plaintiffs in rebuttal was dismissed, the instant revision petition under Article 227 of the Constitution of India has been filed.

The submissions made by Mr. Amit Arora, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argues that a suit for declaration was filed by the respondents claiming to be co-sharers in possession in the suit land left by original owner Saudagar Singh. In Para No.4 of the plaint, the plaintiffs-respondents categorically pleaded that in case any will executed by the deceased is produced and proved, that is illegal, anti-dated and result of fraud, misrepresentation and impersonation.

The said pleadings of the plaintiffs clearly indicated that the will in favour of defendant No.1 was in the knowledge of the plaintiffs. An issue with regard to the validity of the will was framed and the onus to prove the same was placed on the defendants. If at all, any evidence had to be led with regard to the will, the petitioner ought to have produced the same while leading evidence in affirmative and could not be allowed to produce any evidence with regard to the will in their rebuttal evidence. Order XVIII Rule 3 CPC would not give a right to the plaintiffs to lead evidence in rebuttal which is of affirmative nature. To support his argument, learned counsel relies upon ***Mam Raj vs. Raghbiri and others, 2014(62) R.C.R. (Civil) 819.***

The reasons given by learned trial court for dismissing the application of the petitioner-defendant No.1 under Section 151 CPC for discarding evidence led by the plaintiffs in rebuttal are as under:-

“After hearing learned counsel for both the parties and perusal of record it shows that present suit has been filed by respondents/plaintiffs for declaration regarding three wills executed by Ishar Kaur, Kartar Kaur and Gural Singh regarding land in dispute. Defendants No.1 and 2 have denied execution of any will by said persons. On the basis of pleadings of parties, issues were already framed on 08.11.2013 wherein issue no.2 was framed as :

'2. Whether the defendants qua the rights upon the disputed property through the valid wills? OPD.'

Onus to prove above said issue was on defendants. Defendants have already led their evidence and closed the same. Plaintiffs have right to rebut evidence of defendants regarding wills

pleaded by them. An application filed by respondents/plaintiffs to prove mortgage deed dated 30.01.1989 by way of secondary evidence was already allowed by this Court on 02.08.2016. Plaintiffs are leading evidence to prove said mortgage deed in order to compare signatures/thumb impressions of executant of will namely Gurpal Singh. Said evidence is certainly helpful for both the parties. Relevancy of said evidence cannot be determined at this stage. Same is matter of arguments. In these circumstances, application in hand is considered as without merits and is dismissed.”

From the copy of the application filed by petitioner-defendant No.1 as well as the impugned order, it appears that the defendants (including the petitioner) claimed execution of a will by the deceased. In their pleadings, the plaintiffs-respondents had pleaded that if at all any will is produced/ proved, it is an illegal, anti dated, null and void document and result of fraud, misrepresentation and impersonation. Rightly as per law, onus to prove the issue framed regarding validity of the will set up by the defendants was placed on them. The plaintiffs adduced their evidence required to be led in affirmative and thereafter the defendants (including the petitioner) produced their evidence to prove the issues, the onus to prove which, was on them. In other words, they produced evidence to prove validity of the will set up by them. It is only after close of their evidence that in rebuttal to the issue of the will the plaintiffs-respondents could get an opportunity to adduce evidence. Accordingly, learned trial court rightly allowed the plaintiffs to produce evidence in rebuttal to rebut the evidence

Thus, there being no illegality, perversity or jurisdictional error warranting interference in the order of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

17.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**
Whether Reportable : **Yes/ No**