

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

**CR No.1635 of 2014**

**Date of decision: 13.10.2017**

**Maghar Singh and others**

**...Petitioners**

**Versus**

**Labh Singh and others**

**...Respondents**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Sunny K. Singla, Advocate,  
for the petitioners.

Mr. Jai Bhagwan, Advocate,  
for the respondents.

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**Ritu Bahri, J.**

Challenge in this petition is to the order dated 07.02.2014 (Annexure P-6) passed by the Civil Judge (Junior Division), Malerkotla, whereby application filed by defendant-petitioners for leading additional evidence, has been dismissed.

Plaintiff-respondents (Labh Singh, Jagdev Singh and Rajinder Kaur) have filed a suit for declaration that they are owners to the extent of 1/5<sup>th</sup> share in the land left by deceased-Gurdial Singh, as mentioned in the head note of the plaint and the Will dated 20.06.1997, alleged to be executed by deceased Gurdial Singh in favour of defendant-petitioners, was forged and fabricated document. After filing of written statement and framing of issues, plaintiff-Labh Singh closed his evidence on 13.12.2003.

Defendant-petitioners also concluded their evidence on 05.10.2004.

Thereafter, plaintiff-respondents moved an application dated 26.10.2004 (Annexure P-1) for permission to lead additional evidence, which was allowed vide order dated 10.08.2005. This order was challenged by the defendant-petitioners before this Court by filing Civil Revision No.4706 of 2005. During the pendency of said petition, plaintiffs examined Dr. Navdeep Gupta, Handwriting and Fingerprints Expert in rebuttal. Thereafter, defendant-petitioners filed an application for permission to lead additional evidence by examining Handwriting and Fingerprints Expert. This application was resisted by plaintiff-respondents by taking a plea that defendants have already set up a Will dated 20.06.1997 in their defence and the said Will was got exhibited by them through Buta Singh (DW-2) and Maghar Singh (DW-3). Defendants themselves had closed their evidence on 05.10.2004. Thereafter, plaintiffs led their rebuttal evidence in the form of handwriting and fingerprints expert to prove that the alleged Will was a forged and fabricated document. It was prayed that defendant-petitioners could not be allowed to make an application for leading additional evidence to examine handwriting and fingerprints expert on their behalf as that could have been done by them at the time of leading their evidence.

Trial Court after hearing learned counsel for the parties, dismissed the application by referring to the judgment passed by this Court in **2007 (2) CCC 89 (P&H)**. Hence, this petition.

Learned counsel for the petitioners has argued that after closure of the evidence of defendant-petitioners on 05.10.2004, plaintiff-respondents had examined Lal Din (PW-3) & Raj Kumar in their rebuttal evidence. At that stage, application under Section 65 of the Indian Evidence Act for permission to lead additional evidence in respect of sale deed Nos.577 &

3785 dated 13.05.1987 & 09.01.1989 respectively was filed by plaintiff-respondents, which was allowed vide order dated 10.08.2005. Against this order, defendant-petitioners preferred Civil Revision No.4706 of 2005. At the time of issuing notice of motion, proceedings before the trial Court were stayed by this Court vide order dated 30.01.2006. Ultimately, the said petition was allowed vide order dated 25.02.2008 (Pnnexure P-3). However, during the pendency of said petition, trial Court proceeded to record the additional evidence of plaintiff-respondents, in which, they had examined Dr. Navdeep Gupta, Handwriting and Fingerprints Expert. While allowing the aforesaid petition, trial Court was directed to consider the matter afresh in accordance with law. Pursuant to the order dated 25.02.2008 (Annexure P-3) passed by this Court, trial Court dismissed the application filed by plaintiff-respondents for leading secondary evidence, vide its order dated 08.11.2010. This order was challenged by plaintiff-respondents before this Court by filing Civil Revision No.505 of 2011, which was disposed of vide order dated 27.11.2012 (Annexure P-4) by observing that the evidence already led will be deemed to be evidence led in due permission. Learned counsel has finally argued that pursuant to the order dated 27.11.2012 (Annexure P-4), application was filed by the present petitioners-defendants on 06.11.2013 to rebut the additional evidence led by plaintiff-respondents during the pendency of civil revision before this Court. This application has now been dismissed on the ground that defendant-petitioners had an opportunity to prove genuineness of the Will in question, before closing of their evidence.

After hearing learned counsel for the parties, the findings recorded by the trial Court while passing the impugned order, requires to be

set aside. In the present case, plaintiff-respondents had examined Lal Din (PW-3) and Raj Kumar in rebuttal evidence and at that stage, they had made an application to lead additional evidence with respect to sale deed Nos.577 & 3785 dated 13.05.1987 & 26.10.2004 respectively. Defendant-petitioners had no occasion to lead any evidence to prove genuineness of those sale deeds or to rebut the additional evidence led by plaintiff-respondents. It was only after passing of the order dated 27.11.2012 (Annexure P-4), they could move application (Annexure P-5) for examining a handwriting and fingerprints expert with regard to the above said two sale deeds. They had no occasion to lead any evidence on these sale deeds at the time of closing their evidence on 05.10.2004.

In these circumstances, impugned order dated 07.02.2014 (Annexure P-6) is set aside and the trial Court is directed to provide one effective opportunity to defendant-petitioners to lead their additional evidence by examining handwriting and fingerprints expert in order to rebut the evidence led by plaintiff-respondents with regard to sale deeds Nos.577 & 3785 dated 13.05.1987 & 26.10.2004 respectively.

Allowed accordingly.

13.10.2017  
ajp

(RITU BAHRI)  
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No