

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

CR No.1941 of 2017

Date of decision: 18.03.2017

Gurcharan Singh

..Petitioner

Versus

Pritam Kaur and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. S.S. Tiwana, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 02.03.2017, whereby, the application filed by the petitioner-defendant for summoning of the pension record of deceased-Gurdial Kaur for comparison of her thumb impression on power of attorney dated 26.02.1996 has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that the respondents-plaintiffs filed a suit for declaration against the petitioner-defendant on the ground that respondent No.1 and the petitioner are owners in possession in equal share of a house situated at Prem Basti Sangrur and also for permanent injunction restraining the petitioner-defendant from interfering in peaceful possession of the respondents-plaintiffs. Said house was purchased by deceased-Gurdial Kaur i.e., mother of petitioner-defendant and respondent No.1-plaintiff vide

registered sale deed No.1217 dated 03.12.1954 from the original owner Mohan Lal. Said sale deed was registered with the office of Sub-Registrar, Sangrur. The petitioner-defendant is claiming to be owner in possession of said house on the basis of sale deed No.365 dated 16.05.1996 executed by one Pritam Singh being the General Power of Attorney holder of deceased-Gurdial Kaur, which was executed by her in favour of Pritam Singh vide General Power of Attorney dated 26.02.1996. The respondents-plaintiffs filed the suit without producing sale deed dated 03.12.1954 and the same was subsequently produced on record in pursuance of directions issued by the trial Court in an application moved by the petitioner-defendant. Thereafter, the petitioner-defendant filed an application for summoning of pension record of deceased-Gurdial Kaur for comparison of her thumb impression with the thumb impression on Power of Attorney dated 26.02.1996. Notice in the application was issued to the respondents-plaintiffs and reply thereof was filed. However, said application was dismissed vide order dated 02.03.2017, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the respondents-plaintiffs did not produce original sale deed on the file for comparison of thumb impression whereas it was in their possession so that the petitioner-defendant may not get any chance to lead evidence of finger print expert. The same was produced in pursuance of directions issued by the trial Court on an application moved by the petitioner. Learned counsel also submits that the petitioner-defendant was having right to lead his evidence to defend the document produced by the respondents-plaintiffs from their possession

by comparison of thumb impression on the papers of drawing pension, which are in possession of the competent authorities. Earlier the petitioner-defendant could not produce the report as the original sale deed was in possession of the respondents-plaintiffs. Said application was dismissed on the ground that the petitioner-defendant had already availed various opportunities and the evidence was also closed by order of the Court on 08.09.2016; total twelve opportunities were availed to lead rebuttal evidence but still no evidence was led and that the expert was recommended only on mentioning of the petitioner. It is also mentioned in the impugned order that merely summoning of the pension record of deceased-Gurdial Kaur it will not serve the purpose as the application has been filed just to delay the proceedings.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The facts relating to filing of suit for declaration and permanent injunction by respondents-plaintiffs, filing of written statement to the suit by the petitioner-defendant and also moving of an application by the petitioner for comparison of thumb impression of deceased-Gurdial Kaur are not disputed.

It is an admitted fact by both the parties that the house in dispute was purchased by deceased-Gurdial Kaur, the mother of present petitioner and respondent No.1, vide registered sale deed No.1217 dated 03.12.1954 from its original owner Mohan Lal. Said sale deed was registered with the office of Sub-Registrar, Sangrur. The petitioner-

defendant is claiming to be owner in possession of the house on the basis of sale deed dated 16.05.1996 executed by General Power of Attorney holder Pritam Singh. Said registered sale deed was produced on record in pursuance of directions issued by the trial Court on the application moved by the present petitioner-defendant. During pendency of the suit, the petitioner moved an application for change of expert and for comparison of thumb impression of deceased-Gurdial Kaur on the pension papers and the power of attorney on the ground that earlier the sale deed was not produced on record.

Earlier application moved by the petitioner was allowed, whereby, original sale deed was produced by the respondents-plaintiffs. Thereafter, the application moved by the petitioner-defendant to change the expert and to allow the finger print and document expert Sh. V.B. Bhatnagar to inspect the Court file and to take photographs of disputed and standard thumb impression of deceased-Gurdial Kaur was also allowed. The expert was directed to submit his report after taking photographs of the disputed and standard thumb impressions of deceased-Gurdial Kaur. The petitioner-defendant took many dates and thereafter, an application was moved for change of expert on the ground that the expert was charging more amount from the petitioner-defendant. The petitioner filed an application to summon the pension record of deceased-Gurdial Kaur to get her thumb impressions compared by engaging some other expert. It appears that it was an indirect method to change the expert whereas the name of earlier expert was recommended by the petitioner for comparison of thumb impressions of deceased-Gurdial Kaur.

The purpose of moving an application for change of expert and for comparison of the thumb impressions of deceased-Gurdial Kaur again appears to be an act to delay the proceedings. The evidence of the petitioner has also been closed by Court order on 08.09.2016 as he had already availed various opportunities to lead rebuttal evidence. It has not been mentioned in the application as to how the summoning of pension record of deceased-Gurdial Kaur and comparison of her thumb impressions from some other expert are going to serve the purpose for deciding the controversy in hand. There cannot be any end for leading of the evidence, if various applications are moved for the same purpose. Moreover, the earlier expert was recommended by the petitioner himself for comparison of thumb impressions. Simply by saying that he was charging more fee is not a ground to appoint another expert.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and no interference is required in the impugned order. The revision petition being devoid of any merit is hereby dismissed.

18.03.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No