

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4113-2015

Date of Decision:- 17.08.2017

Ashok Kumar (deceased) through LRs

.....Petitioners

Versus

Vinod Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kul Bhushan Sharma, Advocate,
for the petitioners.

Mr. Pritam Saini, Advocate,
for respondent No.7.

Mr. Ashok Arora, Advocate
for respondent No.8.

RITU BAHRI, J. (Oral)

Present petition has been filed under Section 227 of the Constitution of India for setting aside the impugned order dated 19.05.2015 (Annexure P-1), passed by learned Civil Judge (Junior Division), Rewari, vide which the application for additional evidence (Annexure P-2) has been dismissed and the order dated 21.02.2015 (Annexure P-4), passed by the learned Civil Judge (Junior Division), Rewari, whereby an application (Annexure P-5) for rebuttal evidence has been dismissed.

Petitioner-plaintiff Ashok Kumar filed the suit for declaration and injunction seeing the decree of declaration to the effect that he was having $\frac{1}{4}$ share in the suit property described in para No.1 of the plaint and mutation No.3784 sanctioned on 16.05.1987 on the basis of the registered Will No.373 dated 14.08.2008 and mutation No.20504 sanctioned in terms of that Will were illegal, null and void and not binding on the rights of the plaintiff and in the alternative the registered Will No.222 dated 26.09.2002 be declared as valid and legal and decree for permanent injunction restraining the defendants from alienating or creating third party right and ousting the plaintiff from his $\frac{1}{4}$ share. It was further pleaded that Laxman Singh Karta of the family has executed the Will in respect of the ancestral property in question bequeathing the life estate, interest for maintenance in favour of Dhankaur. Laxman Singh also executed the Will registered No.222 dated 26.09.2002 in favour of the plaintiff and defendant Nos.1 to 3. However, Dhankaur having no right, title except life estate, interest for maintenance, got mutation No.3784 sanctioned on 16.05.1987 on the basis of the said Will which illegal, null and void as Laxman Singh had only bequeathed the life interest in the suit property in favour of Dhankaur. Defendants have got sanctioned the mutation of inheritance of Dhankaur on the basis of alleged Will registration No.373 dated 14.08.2008. On notice, defendant Nos.1 to 3 filed the written statement and thereafter the issues were framed: -

- “i. Whether the suit property was coparcenary in nature/OPP
- ii. Whether the plaintiff has birth right in the suit property to the

extent of ¼ share?OPP

- iii. Whether mutation no.3784 sanctioned on 06.05.1987 in favour of Dhankaur is illegal, null and void/OPD
- iv. Whether the registered Will dated 14.08.2008 is a result of fraud and liable to be set aside alongwith the mutation No.20504 sanctioned unit?OPP
- v. Whether the Will No.222 dated 26.09.2002 is valid?OPP
- vi. Whether the plaintiff has no locus standi and cause of action to file the suit?OPD
- vii. Whether the suit is not maintainable in the present form?OPD
- viii. Whether the plaintiff is stopped by his own act and conduct from filing the suit?OPD
- ix. Whether the suit is barred by limitation.
- x. Relief.”

The above-said issue No.iv was with regard to the registered Will dated 14.08.2008.

After closure of the evidence, the plaintiff has made application for rebuttal evidence (Annexure P-5) and application for additional evidence (Annexure P-2). Both the applications have been dismissed vide orders dated 21.02.2015 (Annexure P-4) and dated 19.05.2015 (Annexure P-1).

Learned counsel for the petitioners has referred to the judgments passed this Court in **Gurbaksh Singh Vs. Jagat Singh and others, 1991 Civil Court Cases 47 (P&H)** and **Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon, 1994(1) RRR 677** and to contend that at this stage of rebuttal evidence he should have been granted an opportunity to cross-examine the attesting witness of the said Will, namely, Shiv Lal Saini as he was required to prove the execution of the Will.

Learned counsel for the respondents has argued that the above-said Will was a registered document and he was required to lead evidence to show that this Will was surrounded by suspicion. Had the onus of proving the said Will on the defendant, the plaintiff should have reserved his right to lead evidence in rebuttal and only then he could lead his evidence in rebuttal. In the present case, initial onus was on the plaintiff and without reserving any right, the above-said application (Annexure P-2) has rightly been dismissed as held by this Court in **Nirmal Singh Vs. Kamal Saini and others, 2014(4) CivCC 562.**

Heard learned counsel for the parties.

The judgment referred to by learned counsel for the petitioner in the case of **Gurbaksh Singh's (supra)** shall not be applicable to the facts of the present case as in that case the onus to prove the Will was on the defendants and no opportunity was granted to the plaintiff for rebuttal. In that case, the evidence of the defendants was closed on 11.06.1976 and the trial Court proceeded to hear the arguments and decided the crucial issue on Will against the plaintiff and dismissed the suit. No opportunity was granted to the plaintiff to lead evidence in rebuttal.

The facts of case **Kanwarjit Singh Dhillon's (supra)**, will not be relevant to the facts of the present case as it was a case of probate where the propounder of the Will had approached for granting the property under Section 276 of the Hindu Succession Act, 1925. In the probate proceedings the issues were framed and the onus was on the propounder of the Will to lead evidence with regard to execution of the

Will dated 22.07.1978. He had led the evidence by examining the attesting witnesses i.e. typist and handwriting experts. Once the propounder of the Will had led evidence and Kanwarjit Singh Dhillon, who was opposing the probate proceedings could not lead any evidence to show that any fraud and undue influence was there to discard the genuineness of the Will.

At the same time, the ratio of judgment in case **Nirmal Singh's case (supra)** is directly applicable to the facts of the present case as in this case an application for rebuttal evidence was rejected on the ground that the onus to lead evidence with regard to comparison of signatures and issues with regard to agreement to sell in question was on the petitioner and after recording the evidence he did not reserve any right. After closing the evidence as a matter of right he could not examine to handwriting expert in rebuttal.

In the present case, the onus on issue No.iv was on the plaintiff. After closing his evidence, he has made an application to recall one of the attesting witnesses, namely, Shiv Lal Saini for examination. On a specific query put, learned counsel for the petitioners stated that when the defendants had examined this witness Shiv Lal Saini, he had not cross-examined him. Once the plaintiffs choose not to cross-examine witness Shiv Lal Saini, when he had been summoned by the defendants and they were aware about the names of the attesting witnesses, they could not exercise that right now by calling the witness of the defendants by additional evidence.

Therefore, keeping in view the facts and circumstances of the

present case and the law laid down by this Court in Nirmal Singh's case (**supra**), this Court of the considered view that learned learned Civil Judge (Junior Division), Rewari, have examined the matter in the right perspective and dismissed the applications. Moreover, learned counsel for the petitioners did not point out any legal infirmity or illegality in the impugned orders, so as to interfere, in exercise of revisional jurisdiction of this Court under Article 227 of the Constitution of India.

Accordingly, there is no merit in the present revision petition and the same is hereby dismissed as such.

August 17, 2017
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No