

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) Civil Revision No.4711 of 2017
Date of Order: 26.07.2017

Urmila @ Pinki

..Petitioner

Versus

Gulshan Rai and others

..Respondents

(2) Civil Revision No.4708 of 2017

Urmila @ Pinki

..Petitioner

Versus

Gulshan Rai and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sagar Deswal, Advocate,
for the petitioner.

ANIL KSHETARPAL, J.

In Civil Revision No.4711 of 2017, petitioner has challenged order dated 18.05.2017, passed by the Civil Judge(Junior Division), Rohtak, dismissing application for additional evidence.

Plaintiffs have filed a suit for declaration with consequential relief of permanent injunction. Plaintiff no.1 claims that she has come to know that her father Hira Lal had executed two Wills dated 03.05.2002 and 27.08.2003. It was further asserted that Will dated 03.05.2002 is in possession of defendant no.3, whereas Will dated 27.08.2003 is in possession of defendant no.1. Plaintiff No.1 wants to produce both the wills by way of additional evidence. A prayer was made for producing the above stated Wills and to examine scribe and attesting witnesses of the said Wills in additional evidence.

Learned Civil Judge (Junior Division), Rohtak, dismissed the application with following observations:-

4. Perusal of the plaint filed by the plaintiffs reveals that the present suit has been filed by the plaintiffs against the defendants seeking thereby a relief of declaration to the effect that the Will in question allegedly executed by Hira Lal in favour of defendant no.1 is illegal, null and void and that they are joint owners in possession of 2/5th share over the suit property and the defendants are owner in possession of 3/5th share therein. Further relief of mandatory injunction has also been prayed for against the defendant no.1. Said perusal further reveals that the averments regarding execution of above stated Wills sought to be produced by way of additional evidence, is conspicuously missing from the pleadings of the plaintiff. Since there is no averment regarding execution of above stated Wills in the pleadings of the plaintiffs, said documents are beyond pleadings and consequently, same can not be allowed to be tendered in additional evidence of the plaintiffs. Since no permission can be granted for tendering above stated documents in additional evidence of the plaintiffs, permission for examining of attesting witnesses and scribe of said Will, can also not be granted. In view of the discussion made above, this court is of the considered opinion that present application moved by the applicants/plaintiff

no.1 is devoid of merit and accordingly, same stands hereby dismissed.”

During the course of arguments, learned counsel for the petitioner has admitted that the case is now at the stage of rebuttal and arguments. Petitioner before this Court is plaintiff No.1. Plaintiffs led their evidence. Defendants have also concluded their evidence. Plaintiff No.1 is now wanting to produce two Wills, which are not in her possession. One Will is being claimed to be in possession of defendant no.3 and another Will is in possession of defendant no.1.

In the main suit, dispute between the parties is with regard to Will executed by Hira Lal, dated 30.08.2007. Parties were alive to the dispute involved in the suit. Parties have already led their evidence. Copies of the Wills dated 03.05.2002 and 27.08.2003 are sought to be produced for comparison of signatures only.

The suit was filed on 10.02.2011. It is pending before the trial Court for 6½ years. The case is at the stage of rebuttal and arguments. The documents sought to be produced in additional evidence are not of unimpeachable credence. Even the Wills sought to be produced in additional evidence are not in possession of the petitioner.

Therefore, finding no reason to interfere with the order passed by the learned trial court, the revision petition is dismissed.

Civil Revision No.4708 of 2017 has been filed against order dated 18.05.2017, passed by the Civil Judge (Junior Division), Rohtak, dismissing application filed by plaintiff no.1, to allow comparison of signatures of late Sh. Hira Lal on the Will, Ex.D1, by examining the Hand Writing and Finger Print expert with documents Ex.P11, Ex.P13, Ex.P14

and Mark E to Mark N in rebuttal evidence.

The trial court dismissed the application. The relevant para of order is extracted is as under:-

“4. Perusal of the plaint filed by the plaintiffs reveals that by virtue of present suit, plaintiffs have challenged the will dated 30.08.2007 allegedly executed by late Hira Lal in favour of defendant no.1. Said perusal further reveals that in para no.5 of the plaint it has been specifically mentioned that Hira Lal never signed or thumb marked said Will as same was obtained by the defendant no.1 in his favour by colluding with the scribe and the attesting witnesses of said Will. Thus, perusal of plaint makes it manifest that it is the plaintiffs who have challenged the Will in question on the basis of same being forged and accordingly, it was for the plaintiffs to prove that the said Will is forged and same does not bear the signatures of late Hira Lal by leading evidence on said point in their evidence in affirmative. Since the onus to prove the Will being forged was upon the plaintiffs, they cannot be allowed to lead evidence of Handwriting Expert on said point in the rebuttal evidence and same should have been done at the time of plaintiffs evidence. In view of said discussion, this Court is of the considered opinion that the present application moved by the applicants/plaintiffs is devoid of merit and accordingly, same stands hereby dismissed.”

I have heard counsel for the petitioner at length.

Opportunity to lead rebuttal evidence is available to the plaintiff only with respect to the issue(s), onus whereof is on the defendant.

The issues framed by the trial Court, on 05.11.2015, are extracted as under:-

1. *Whether the plaintiffs are entitled to a decree for declaration to the effect that the will alleged to be executed by Sh. Hira Lal along with subsequent revenue record on the basis of will is illegal, null and void and ineffective on the rights of the plaintiffs?OPP*
2. *Whether the plaintiffs are owners in joint possession over 2/5th share over the suit property and defendants are owners in joint possession of remaining 3/5 share of the suit property in equal shares and further the plaintiffs and defendants no.2 and 3 have their respective share in Gopal Bhatta Company and also plaintiffs and defendants no.2 & 3 are entitled to obtain the amount left by Hira Lal in his bank account as averred in para no.6 of the plaint, as per their respective shares i.e. 1/5th each?OPP*
3. *Whether the plaintiffs are further entitled to a decree for permanent injunction restraining defendant no.1 from alienating the suit property and from ousting the plaintiffs from the suit property?OPP*

4. *Whether the plaintiffs are further entitled to a decree for mandatory injunction directing defendant no.1 to restore possession of the plaintiffs over the suit property, if during the pendency of the present suit, plaintiffs are dispossessed forcibly and illegally from the suit property?OPP*
5. *Whether the suit is not maintainable in its present form?OPD*
6. *Whether the plaintiffs have no cause of action and locus standi to file the present suit?OPD*
7. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD*
8. *Whether the plaintiffs have suppressed the true and material facts from the court?OPD*
9. *Whether this court has no jurisdiction to try and entertain the present suit?OPD*
10. *Relief.”*

A reading of the issues would show that onus to prove issues no.1, 2, 3 and 4 is on the plaintiff. Issue no.1 is dealing with the will dated 30.08.2007 in question. Plaintiffs had sufficient opportunity to lead her evidence in affirmative. Plaintiffs did lead evidence. Thereafter the defendants have also led their evidence. Now at this stage, plaintiff-petitioner cannot be permitted to lead rebuttal evidence with respect to issue no.1. It has been held by the Hon'ble two Division Bench judgments of this Court that the rebuttal evidence can only be permitted with respect to the

issue, onus whereof was on the defendant. Plaintiff cannot be permitted to lead evidence in rebuttal with respect to the issue, onus whereof was on the plaintiff. The judgments passed by the Honb'le Division Bench are reported as Surjit Singh and others v. Jagtar Singh and other, 2007(1) PLR, 552 and Jagdev Singh and others v. Darshan Singh and others, 2007(1) R.C.R.(Civil), 794.

In view of the fact that onus to prove issue no.1 was on the plaintiff, therefore, the plaintiff-petitioner cannot be permitted to lead evidence in rebuttal on issue no.1.

Taking into consideration the facts and circumstances, I do not find any reason to interfere with the order passed by the trial Court.

Hence, both the revision petitions are ordered to be dismissed.

July 26, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No