

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5293 of 2015
Date of Decision: 16.11.2017

Vidya Kaur

---Petitioner

versus

Swaran Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vipin Mahajan, Advocate
for the petitioner**

Respondent Nos. 2, 4 and 6 already ex parte

**Mr. J.S.Mahal, Advocate
for respondent Nos. 3 and 5**

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 31.7.2015 (Annexure P-5) whereby application of the petitioner/plaintiff for comparison of thumb impressions of Rura @ Rur Singh on the sale deed Ex. D-1 with mortgage deed Ex. P-2 has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed a suit for declaration to the effect that she alongwith defendant No. 6 is the owner in possession of land measuring 1 kanal 7 marlas and sale deed dated 24.11.1980 purported to be executed by Rura @ Rur Singh in favour of defendant Nos. 1 to 5 is illegal, null and void and has never been executed

by its owner. It is further submitted that the petitioner examined herself and Tarsem Singh PW2 and proved mortgage deed Ex. P-2 executed by Rura @ Rur Singh in favour of Sukhchain Singh and closed her evidence in affirmative on 14.11.2014. Later, the contesting defendants examined Darshan Kaur DW1 and produced on record original sale deed dated 24.11.1980 and closed their evidence on 21.5.2015. It is further submitted that immediately thereafter, the petitioner moved the instant application for comparison of thumb impressions of Rura @ Rur Singh on sale deed Ex. D-1 with the mortgage deed Ex. P-2 but the same has been wrongly rejected by the Court below. It is further submitted that a serious prejudice is likely to be caused to the petitioner in case she is not permitted to examine an expert on the basis of comparison of the two documents when, on the contrary, the contesting defendants can be provided with an opportunity to lead evidence to rebut report of the expert witness.

Counsel representing the contesting respondents No. 3 and 5, has supported the impugned order with the submission that the petitioner is not entitled to lead evidence in rebuttal as onus of both the issues on merits of the case has been placed upon the petitioner, the petitioner cannot be permitted to examine the expert in rebuttal or by way of additional evidence to fill up gaps and lacuna in her case. Another submission made by counsel is that the contesting defendants did not examine an expert to prove sale deed Ex. D1, therefore, there is no occasion for the petitioner to examine an expert either in rebuttal or by way of additional evidence.

I have heard counsel for the parties, perused the paper book particularly the application (annexure P-3), reply thereto (Annexure P-4) and the order impugned (Annexure P-5).

It is undisputed position of the case that the instant application was filed by the petitioner at the stage when the case was pending for rebuttal evidence and arguments. Perusal of the application (Annexure P-3) does not indicate if the petitioner wanted to examine the expert either in rebuttal or by way of additional evidence. The provisions and principles in law for permitting a party to lead evidence in rebuttal or by way of additional evidence are altogether different.

In the case at hand, perusal of the issues, reproduced in para 3 of the grounds of revision, would indicate that the petitioner cannot assert her right to examine the expert witness in order to rebut the evidence adduced by the contesting defendants. There is not even an averment in the application as to why the petitioner was rendered handicapped to examine the expert witness in her affirmative evidence despite knowing fully well that onus of both the issues qua merits of the case was placed upon the petitioner. If the original sale deed was not a part of record at the time of adducing evidence by the petitioner, she could call upon the defendants to produce the original document at the relevant stage of the proceedings. It is not denied that the defendants did not examine an expert qua the sale deed in question for the purpose of rebutting evidence adduced by the petitioner. In this view of the matter, it can safely be concluded that the petitioner's application for examination of an expert neither falls within the purview of evidence in rebuttal nor by way of additional evidence. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention in exercise of supervisory jurisdiction of this court.

For the foregoing reasons, the petition fails and is accordingly

dismissed .

No order as to costs.

(Rekha Mittal)
Judge

16.11.2017
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No