

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

CR No.5210 of 2017
Date of decision :08.08.2017

Gurmukh Singh and others

...Petitioners

Versus

Harbans Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parvinder Singh, Advocate
for the petitioners.

Mr. Vijay Lath, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Notice of motion for 26.08.2017.

Mr. Vijay Lath, Advocate appears for contesting respondents and accepts notice. With the consent of learned counsel for the parties, the case is taken up for final hearing.

Defendants are in revision petition against order dated 05.07.2017, whereby the application filed by the defendants for permission to get the disputed thumb impression compared with the standard thumb impression, has been dismissed.

Plaintiffs-respondents had filed a suit for declaration to the effect that they are in joint possession of 1/7th share out of which ½ share shown to be owned by late Shri Ajmer Singh.

The issues were framed on 11.11.2016. Plaintiffs led their evidence in affirmative. Thereafter, defendants were permitted to lead their evidence. The case is still pending at the stage of evidence of the defendants.

Learned Additional Civil Judge (Senior Division), SAS Nagar, Mohali dismissed the application on the ground that there is no necessity to obtain the opinion of the expert regarding thumb impression available on the Will dated 14.06.1971. While dismissing the application, learned Additional Civil Judge (Senior Division), SAS Nagar, Mohali has recorded as under:-

“I have heard learned counsel for the parties at length and also gone through the judicial file very carefully. From the perusal of the file, it reveals that it is the admitted fact that the plaintiff has challenged the judgment and decree dated 28.09.1985 and further it is also admitted fact that the mutation in favour of the plaintiff was sanctioned on the basis of judgment and decree dated 28.09.1985 and further it is also admitted fact that the will dated 14.06.1971 was never incorporated in the revenue record and further no mutation was ever sanctioned on the basis of the said Will. Since it is the admitted fact that the said Will was never incorporated in the revenue record and further in such circumstances, when the mutation in favour of the plaintiff was sanctioned on the basis of judgment and decree and further plaintiff has specifically challenged the judgment and decree, this Court is of the considered opinion that there is no legal necessity to obtain the expert report regarding Will dated 14.06.1971. So accordingly, application, which is without any merits, is

hereby dismissed.”

Learned counsel for the petitioners has submitted that defendants-petitioners wanted to get examined the disputed thumb impressions of late Shri Ajmer Singh on registered Will dated 14.06.1971 as also on the written statement filed in the Court and the statements suffered by late Shri Ajmer Singh in a consent suit titled as **“Gurmukh Singh vs. Ajmer Singh”** decided on 28.09.1985. He submits that the defendants are leading their evidence and defendants wanted to get the thumb impressions of late Shri Ajmer Singh compared with standard thumb impressions.

On the other hand, learned counsel for the plaintiffs-respondents has submitted that defendants have not disclosed on what document the standard thumb impression appears or which is that document admittedly having thumb impression of late Shri Ajmer Singh. He has further submitted that the application filed by the defendants is pre-mature because unless and until the standard thumb impressions of late Shri Ajmer Singh are produced, no such application could be filed.

I have considered the submission of learned counsel for the parties.

A reading of the impugned order shows that the learned Additional Civil Judge (Senior Division), SAS Nagar, Mohali overlooked the contents of the application. The application filed by the defendants, which has been produced on the file as Annexure P-5, would show that the defendants not only wanted to compare the thumb impression of late Shri Ajmer Singh upon the registered Will dated 14.06.1971 but also wanted to get the disputed thumb impression of late Shri Ajmer Singh on the written statement and the statement suffered in the Court by late Shri Ajmer Singh,

during the suit decided on 28.09.1985. Therefore, the order passed by the Additional Civil Judge (Senior Division), SAS Nagar, Mohali is erroneous.

Learned counsel for the respondents has submitted that since no standard thumb impression of late Shri Ajmer Singh were available, therefore, the expert cannot be permitted to re-examine it in the absence of any standard thumb impression.

I have considered the submission, however, I am unable to agree. As per the learned counsel for the petitioners-defendants Ajmer Singh had also executed a mortgage deed, which is a registered document. The expert would compare the thumb impressions on the disputed document with the aforesaid mortgage deed.

In my opinion, once the case is pending for defendant's evidence and opportunity to lead evidence is still available with the defendants, the Court cannot stop the defendants to lead their evidence. Expert opinion has some evidentiary value, in case of comparison of thumb impressions. The question whether standard thumb impression of late Shri Ajmer Singh is available or not would be examined by the Court when the opinion of expert comes in evidence. At this stage, the application filed by the defendants cannot be thrown out on the ground that the admitted standard thumb impression of late Shri Ajmer Singh is not available.

Learned counsel for the respondent has further submitted that the application filed by the defendants is pre-mature. I have considered the submission. The defendants-petitioners are leading their evidence. They have to prove their case by producing evidence on the file. Therefore, the application cannot be considered to be pre-mature.

For the reasons recorded above, the application filed by the

defendants-petitioners Annexure P-5 is allowed and the order passed by the learned Additional Civil Judge (Senior Division), SAS Nagar, Mohali dated 05.07.2017 is set aside.

Accordingly, the revision petition is allowed.

08-08-2017
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No