

Civil Revision No.5417 of 2017(O&M)
Date of Decision: **August 29, 2017**

Sukhjot Singh and others ...Petitioners
versus
Gurmeh Kaur and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.P.S.Punia, Advocate for the petitioners.

Mr.Sandeep K.Sharma, Advocate for respondent No.1.

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HARINDER SINGH SIDHU, J.

Challenge in the present revision is to the order dated 27.4.2017 (Annexure P-1), whereby, the evidence of the defendants – petitioners was closed and order dated 13.7.2017 (Annexure P-2), dismissing the review application filed under Order 47 Rules 1 and 2 of the Code of Civil Procedure.

The petitioners and the plaintiffs - respondents belong to one family. Plaintiff-Respondent No.1 Gurmel Kaur filed a suit for joint possession as co-owner to the extent of 1/3rd share of Kartar Singh in the property, fully detailed in the suit, and also for restraining the defendants from disposing of the same in any manner.

The respondents closed their evidence on 13.07.2016. Thereafter, the case was adjourned to 25.07.2016 for the evidence of the petitioners. Various *zimini* orders have been reproduced in the petition, which, undoubtedly indicate that the petitioners have availed of numerous opportunities for producing their evidence but failed to do so. The different dates, on which the case was listed and adjourned, have also been

noted in the order dated 13.07.2017, whereby, the application of the petitioners for reviewing the earlier order dated 27.4.2017 closing their evidence has been dismissed.

Be that as it may, it needs to be noted that application of the petitioners for grant of permission to Gurmeet Kaur, Handwriting and Finger Print expert to take photographs of the thumb impression from the summoned record i.e., Account of Kartar Singh bearing No.17/22.8.1995 of the Dhamot Kalan Co-operative Agriculture Service Society Ltd. Village Dhamot to compare it with the disputed thumb impression of Will Ex. D-4 was allowed by the Court vide order dated 21.02.2017 holding that it is the duty of the Court to make every effort to arrive at the truth. The application to produce the original Will dated 16.09.1983 was also allowed on the same date. The Original Will dated 16.09.1983 was placed on record on 09.03.2017. Thereafter, due to the Ld. Judge being on leave on 16.03.2017, the case was adjourned to 29.03.2017. On 29.03.2017, no DW was present and the case was adjourned to 06.04.2017 on which date DW-1 was cross-examined completely. On the next date i.e., 12.04.2017, no DW was present and the case adjourned to 20.4.2017 on which date the defendant evidence was closed by order.

Ld. Counsel for the petitioners argued that the expert was not examined as the counsel for the petitioners was not aware of the decision on the application. Though this ground does not appear to be very plausible, yet considering the fact that this evidence may be material for the just decision of the case, it would be in the interest of justice to grant one opportunity to the petitioner in this regard.

DW2 Jawala Singh marginal witness to the Will dated 07.08.2003 was examined-in-chief on 21.09.2016 and his cross-examination was deferred. Ld. Counsel states that Jawala Singh fell ill thereafter and has remained under treatment at Fortis Hospital Ludhiana and Rajwant Hospital, Doraha and, hence, could not appear in Court. In this regard, certain Medical Test reports and prescriptions have been placed on record which show that he was undergoing treatment for a substantial period.

Considering the fact that DW2 Jawala Singh is a material witness being a marginal witness to the Will, it would be in the interest of justice if one opportunity is given for cross-examination of this witness.

Accordingly, this revision petition is allowed. The orders dated 27.04.2017 and 13.07.2017 are set aside. The Ld. Trial Court is requested to grant one opportunity to the petitioner to examine the Handwriting and Finger Print Expert as per permission granted vide its order dated 21.02.2017 and also to produce DW-2 Jawala Singh for cross-examination. This shall be subject to the payment of Rs.25,000/- as compensatory costs to plaintiff-respondent No.1. The respondents would also be given opportunity to rebut the evidence of the Expert.

Disposed of in the above terms.

August 29 , 2017

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(HARINDER SINGH SIDHU)
JUDGE

<i>Whether speaking/ reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>