

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 6395 of 2015 (O&M)

Date of Decision: 13.12.2017

Jagir Singh

.....Petitioner

Versus

Swaran Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S.Rekhi, Advocate
for the petitioner.

Mr. Veneet Sharma, Advocate
for respondent No. 1.

ANITA CHAUDHRY, J

This revision is directed against the order dated 31.8.2015 (Annexure P-3) vide which the application filed by the plaintiff/respondent for getting the thumb impression as well as signatures of the petitioner/defendant No. 1 had been allowed.

To appreciate the facts it necessary to notice some facts. A suit was filed by Swaran Singh and his brother against Jagir Singh defendant No. 1 who is also the brother of the plaintiffs. The plaintiffs were seeking a declaration that they were owners in possession to the extent of 2/3rd share in the land detailed in the plaint. They had also challenged the judgment and decree obtained at their back. The plaintiffs had referred to a family settlement of 25.5.2004 between the plaintiffs and defendant No. 1. Defendant No. 1 had denied the settlement and he had also filed a counter claim.

Service had been effected on all the defendants. The pleadings

had been completed and issues had been framed and the plaintiffs had led their evidence. Defendants No. 2 and 3 absented from the trial on 29.11.2013 and they were proceeded *ex parte*. The plaintiffs closed their evidence on 29.9.2014 and thereafter the case was fixed for defendants evidence. It is at that juncture the plaintiffs moved the application to obtain the thumb impressions of defendant No. 1. The case was being adjourned for filing reply when an application was moved on behalf of defendants No. 2 and 3 for setting aside the *ex parte* order. The application was allowed on 24.3.2015 and costs were imposed. The trial Court gave its reasons for imposing heavy costs saying that the plaintiffs will have to bring their witnesses afresh to enable the counsel appearing for respondents No. 2 and 3 to cross-examine them. The case was again posted for evidence of the plaintiffs and three witnesses were examined on 10.7.2015. The trial Court allowed the application filed by the plaintiffs on 31.8.2015 and permitted them to take the thumb impressions of defendant No. 1 for comparison by a hand writing expert. It is that order which is the subject of challenge.

The trial Court had been directed in May 2016 not to pronounce final judgment. The plaintiffs had already completed their evidence and even the defendants have closed their evidence. The case is being fixed for rebuttal evidence and arguments.

The submission on behalf of the petitioner is that the application had been filed by the plaintiffs after the close of their evidence and the plaintiffs were not seeking permission to lead additional evidence and the application could not have been allowed. It was also urged that the settlement was not binding on the other defendants and the documents was

fabricated.

The submission on the other hand is that no doubt the application was filed at a stage when the plaintiffs had closed their evidence but thereafter defendants No. 2 and 3 had filed an application for setting aside the *ex parte* order which had been allowed and they were asked to produce the witnesses and, therefore, the case was again posted for evidence of the plaintiffs and it is after that the application was allowed. It was urged that the evidence has now been led and the hand writing expert had been examined and the case is fixed for final arguments and the trial Court is awaiting the decision of this case. It was urged that whether the family settlement is forged or fabricated, it is for the trial Court to examine on the basis of the evidence led before it or whether it is binding on the remaining defendants, again is a question to be tried.

The record has been examined. No doubt the plaintiffs had closed their evidence and the case was fixed for defendants evidence but some of the defendants who were proceeded *ex parte*, approached the Court and filed an application for setting aside the *ex parte* order against them. No allegations have been made that defendants No. 2 and 3 were in league with the plaintiffs. The trial Court had permitted the defendants to cross-examine the witnesses examined by the plaintiffs and, therefore, the case was again fixed for evidence of the plaintiffs. It is at that juncture that the application had been allowed and the plaintiffs were permitted to take thumb impressions of defendant No. 1. Defendant No. 1 had denied the execution of the family settlement. Even otherwise the petitioner could have examined hand writing expert for comparing the signatures/thumb impressions which were available on record i.e. the written statement and

the Vakalatnama. The other objections raised by the petitioner are not relevant as the issues raised by him are to be addressed by the trial Court after the evidence has been completed.

I find no infirmity in the order.

The petition is dismissed.

Lower Court record be sent back.

(ANITA CHAUDHRY)
JUDGE

December 13, 2017

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No