

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CR No. 6881 of 2015 (O&M)  
Date of decision : 27.10.2017

Darshan Dass

.....Petitioner

Versus

Rajinder Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Hardip Singh, Advocate  
for the petitioner.

Mr. Prashant Bansal, Advocate  
for the respondents.

\*\*\*\*

ANITA CHAUDHRY, J.

CM-22901-CII-2017

For the reasons set out in the application, same is allowed as  
prayed for and affidavit of the petitioner dated 25.10.2017 is allowed to  
be taken on record.

MAIN CASE

The petitioner has challenged the order dated 29.09.2015  
(Annexure P-6) vide which the Civil Judge (Jr. Division), Rajpura has  
dismissed the application filed by the petitioner to examine a  
handwriting expert. There was an additional prayer made in the  
application for framing additional issue on the Will.

It would be necessary to refer to the brief facts. The plaintiff filed a suit seeking declaration that he was the joint owner in the land left behind by their father and the Will dated 01.09.1998 executed by Santokh Dass was illegal and did not affect his right as it was forged and fabricated.

The defendants pleaded that the land was not ancestral and propounded the Will. The trial Court framed the issues but no separate issue regarding the Will was framed. It appears that it escaped the notice of both the parties.

Both the plaintiff and the defendants led their evidence and at the rebuttal stage, the plaintiff moved an application. The heading of the application though refers to the prayer for examination of handwriting expert in rebuttal but in para 2, a prayer was also made for framing of the issue with respect to the Will as that was controversial.

The respondents took the plea that the plaintiff had already taken 15 opportunities and had not examined any witness. He had failed to file an application for framing the issue at the time of his evidence and the plaintiff wanted to create evidence with the help of a handwriting expert.

The trial Court dismissed the application holding that handwriting expert could not be examined in rebuttal while relying upon Ram Kumar Vs. Raj Kumar and others 2014(3) CCC 453 (P&H).

The submission on behalf of the petitioner is that he had made a prayer for framing of additional issue but the order is silent and that aspect was not considered and had the issue been framed then as the

defendants were the propounder of the Will they would have got an opportunity to lead evidence as rebuttal to the evidence led by the plaintiff. It was urged that this Court in *Madan Lal Vs. Nirmal Singh and others 2010(2) Law Herald (P&H) 984* had held that the onus of proving the Will which is alleged to be the result of fraud or undue influence is upon the persons who sets up the Will and the burden of proof is upon the defendants and it escaped their notice that no issue regarding the Will had been framed and the other side also did not point out this fact and the order should be set aside and they should be granted an opportunity to lead evidence in rebuttal. Reliance was also placed upon *Ranjit Singh Vs. Mehfil Restaurant 2008 AIR (P&H) 104*.

The submission on the other hand is that the Division Bench has held that if the plaintiff does not reserve his right of leading evidence in rebuttal then in terms of Order 18 Rule 3 CPC his right to lead evidence in rebuttal will be forfeited.

The petitioner has reproduced the issues on page 3 of the petition, which shows that no issue regarding the Will was framed. Though, the plaintiff had specifically pleaded that the Will was illegal, null and void, the defendants in the written statement had propounded the Will. A prayer for framing of additional issue had been made by the petitioners along with another prayer for examining the handwriting expert. The trial Court has not dealt with the prayer made for framing the additional issue, therefore, the order (Annexure P-6) is set aside. The parties are directed to

appear before the trial Court below on 02.11.2017. The trial Court would hear both the sides on the application and then pass an order afresh considering the legal position.

The petition is allowed.

**(ANITA CHAUDHRY)**  
**JUDGE**

27.10.2017  
sunil

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No