

107

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

**Civil Revision No.6904 of 2017
Date of Decision: 24.10.2017**

Bhoop SinghPetitioner
Vs
Smt. Shanti Devi and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sanjeev K. Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner is aggrieved of the order dated 20.09.2017 passed by the Civil Judge (Jr. Divn.) Hisar whereby application for comparing the thumb impression and signatures of late Sh. Sheo Ram @ Siri Ram (testator of the disputed Will) submitted by DW-8 during evidence of the defendants with the thumb impression available on the identity card issued by the Army Authorities at the time of his discharge from service was dismissed.

[2]. Brief facts are that the plaintiff is brother of defendants No.1 and 3 to 5. Suit property is double storied house at Hisar which was allotted by defendant No.2 in the name of Sheo Ram, who died on 30.06.2006. The Will dated 30.09.1988 executed in favour of defendant No.1 was also assailed being illegal along

with permanent injunction restraining defendant No.1 from alienating or creating any encumbrance over the suit property and also restraining defendant No.2 from transferring the house in favour of any other person on the application of the defendants and further restraining the defendants No.1 and 3 to 5 from changing the nature of the suit property.

[3]. During the course of evidence of the defendants, Deed Writer Sat Pal DW-8 produced the Will and copy of register Ex.D-10. Thumb impression of Sheo Ram appearing in the Will could not be compared with the thumb impression appearing in the identity card issued by the Army Authorities. The challenge to the Will was made on the ground of fraud and cheating. The plaintiff has already led his evidence in affirmative in respect of the issue, the onus of which was on the plaintiff himself, therefore, he cannot lead any evidence in rebuttal, particularly in respect of an issue the onus of which was on the plaintiff himself. The expert evidence cannot be allowed to be led at the stage of rebuttal. Since the challenge was made by the plaintiff to the Will on the basis of fraud and cheating, therefore, onus was on the plaintiff to lead evidence in affirmative.

[4]. During course of arguments, learned counsel for the petitioner has relied upon the statement of witnesses examined by the plaintiff in order to show the context in which the

challenge was made to the Will dated 30.09.1988 executed by Sheo Ram in favour of defendant No.1.

[5]. Having considered the controversy, I am of the view that the plaintiff has sought permission to compare the thumb impression of late Sh. Sheo Ram @ Siri Ram on the identity card issued by the Army Authorities at the time of discharge from service, however in the application, applicant has nowhere stated that as to how the comparison of thumb impression could be made with the signature of Sheo Ram appearing in the Will and the comparison is necessary to adjudicate the present case. Perusal of the Will dated 30.09.1988 would show that the same carries signature of Sheo Ram. DW-8 Sat Pal Deed Writer has denied in his cross-examination that the Will was reduced into writing without obtaining signature of Sheo Ram.

[6]. Taking into entirety of facts and circumstances, I am of the view that the plaintiff cannot be allowed to lead expert evidence at the stage of rebuttal, particularly in view of the onus of relevant issue fastened upon the plaintiff himself. The impugned order passed by the trial Court cannot be faulted with any jurisdictional error or with perversity of any kind. This revision petition is accordingly dismissed.

October 24, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No