

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

**CR No. 7212 of 2017 (O&M)
Date of decision : 25.10.2017**

Mrs. Ambika Singh and another

.....Petitioner(s)

Versus

Col. Gopal Katoch

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gurpreet Singh, Advocate with
Ms. Ginnijeet Malhotra, Advocate
for the petitioners.

Ms. Ekta Thakur, Advocate
for the Caveator.

ANITA CHAUDHRY, J.

The petitioners have assailed order dated 15.09.2017 (Annexure P-8) passed by the Civil Judge (Jr. Division), Chandigarh vide which the application filed by the plaintiffs for examining a handwriting expert and for comparing the signatures of the testators and the witnesses on the Will has been rejected.

A suit for partition, rendition of accounts had been filed by the plaintiffs pleading that they were legal heirs and had a right in the property left behind by their father and the land was ancestral and both the plaintiffs had 1/3rd share each and the Will was fraudulent.

The defendant took the plea that the suit was not maintainable. Plea of non-joinder was also raised. It was pleaded that the suit properties were owned and possessed by his father and who had bequeathed it in his favour vide registered Will dated 15.07.2009 and the properties were not ancestral.

The trial Court framed issues (Annexure P-3) placing the onus upon the plaintiffs with respect to the Will. An application was moved by the plaintiffs that it was the defendant who was the propounder of the Will and therefore, the onus should have been placed upon the defendant. The trial Court vide order dated 16.05.2016 allowed the application holding that there was an inadvertent mistake and rectified it. Onus of issue no.3 was thus placed upon the defendant. After the close of defendant's evidence the plaintiff moved two applications, one for the inspection and for taking the photographs so that they could get the handwriting/signatures compared from an expert. That application is stated to have been returned by the Court being pre-mature. The plaintiffs moved an application saying that they wanted to engage a handwriting expert and they may be permitted to examine the handwriting expert and produce the report of the expert.

The application filed by the plaintiffs is not happily worded and the trial Court noticed it in the opening paragraph of the order and thereafter dismissed the application holding that the evidence was to be led in the affirmative and they could not be allowed to lead evidence in rebuttal.

I have heard counsel of both the sides.

The revision has to be allowed. The onus to prove the Will is always on the propounder of the Will. The trial Court vide its earlier order had rectified the mistake and had placed the onus upon the defendant to prove the Will. The plaintiffs should have been given a right to examine their evidence in rebuttal. It is settled that when the burden of proof of a issue is on the defendant then the plaintiff has to be given an opportunity to lead evidence in rebuttal. The trial Court had wrongly dismissed the application. The impugned order (Annexure P-8) is, therefore, set aside and the plaintiffs are permitted to lead evidence in rebuttal and examine an expert by way of rebuttal evidence on the issues the onus of which was upon the defendant.

(ANITA CHAUDHRY)
JUDGE

25.10.2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No