

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

CR No.1400 of 2018

Date of Decision:01.03.2018

Ram Lal

.....Petitioner

Vs.

Lakhbir Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. H.S. Dhandi, Advocate for the petitioner.

RAMENDRA JAIN, J. (Oral)

Through this revision filed under Article 227 of the Constitution of India, prayer has been made for setting aside order dated 01.02.2018 (Annexure P.5) of the trial Court dismissing the application of the petitioner- plaintiff for recalling and re-examination of PW6 – Dr. Inderjit Singh, Handwriting and Fingerprints Expert.

In nutshell, the petitioner on the basis of a registered Will allegedly executed by his late father Surjan Singh, filed a suit for permanent and mandatory injunction against the respondents to direct them to hand over vacant possession of the suit property and also to restrain them from damaging or to cause damage or any alteration in the same.

There were two attesting witnesses to the said Will, namely, Gurdial Singh and Balbir Singh. Out of them, Gurdian Singh had expired, whereas Balbir Singh was alive, but was living abroad till the time, the petitioner concluded his evidence.

However, the respondents produced said Balbir Singh attesting

witness of the Will in their evidence as DW2, whereupon the petitioner moved an application for his examination as his witness which was allowed.

Consequently, Balbir Singh, attesting witness was examined by the petitioner as PW7, but he turned hostile and did not support the case of the petitioner. Therefore, the petitioner examined PW6 Dr. Inderjit Singh, Handwriting and Fingerprints Expert, who inadvertently submitted incomplete report dated 16.11.2017 Ex.PW6/1. Therefore, the petitioner moved an application for recalling and re-examination of the aforesaid Handwriting and Fingerprints Expert which has been rejected by the trial Court vide impugned order dated 01.02.2018 (Annexure P.5)

Learned counsel for the petitioner inter-alia contends that Balbir Singh had signed the Will in favour of the petitioner at two places i.e. one at the time of execution of the same and other before Sub-Registrar at the time of its registration. However, Handwriting and Fingerprints Expert only submitted his report qua the signatures of Balbir Singh at the time of execution of the Will, but inadvertently forgotten to give his opinion qua his signatures at the time of registration of Will. The trial Court has failed to appreciate that the re-examination of the aforesaid Handwriting and Fingerprints Expert was very much necessary for effective adjudication of the case as PW7 Balbir Singh has turned hostile.

Having given considerable thought to the submissions made by learned counsel for the petitioner, this Court finds merit in the instant revision for the simple reason that the PW6 Dr. Inderjit Singh though had taken the photographs and also examined the signatures of attesting witness Balbir Singh at the time of registration of the impugned Will and marked it

as “X” but did not give any report qua the same. While appearing as PW6, he categorically admitted in his cross-examination that he has not given the report qua the signatures of Balbir Singh at the time of registration of the Will due to his inadvertent mistake.

It is always desirable that for effective adjudication of the case or to decide real controversy in between the parties in an effective manner, no litigant should be non-suited on account of inadvertent lapse of the witness. In the instant case, the mistake committed by PW6 Dr. Inderjit Singh Handwriting and Fingerprints Expert for not giving report qua the signatures of Balbir Singh at the time of registration of impugned Will does not seem to be intentional or deliberate, the petitioner should not be penalised for the same.

Recalling and re-examination of PW6 Dr. Inderjit Singh and taking his report qua the signatures of Balbir Singh at the time of registration of impugned Will is not going to change the nature of the suit. No prejudice is also going to be caused to the opposite side in case, the aforesaid Handwriting and Fingerprints Expert is recalled and re-examined inasmuch as the impugned Will is already on the record. Even nature of a litigation is also not going to be changed. The other side can be very well compensated by costs.

In view of discussion above, the impugned order dated 01.02.2018 (Annexure P.5) is set aside with a direction to the trial Court to permit the petitioner to re-examine PW6 Dr. Inderjit Singh Handwriting and Fingerprints Expert subject to costs of ₹10,000/- payable to the respondent.

This petition is disposed of without issuing notice to the

respondent-defendant with a view to impart justice expeditiously to the parties and to save the huge expenses which may be incurred by him and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondent may move this Court for recalling this order within a period of six weeks from today.

March 01, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No