

21.10.1998, which came to fore for the first time in the pleadings of the case for admission of memorandum of agreement/writing dated 21.10.1998 filed by the widow of defendant No.1 on 04.04.2018.

[4]. In the aforesaid application, pleadings were made that on 21.10.1998, memorandum of agreement/writing was executed between the plaintiff and Dalbara Singh, whereby the parties to the said memorandum of agreement/writing agreed that Dalbara Singh would keep possession of the land and he was also put in actual possession of the land measuring 24 kanals 4 marlas and it was further agreed that plaintiff/respondent No.1 would be entitled to receive Rs.15,000/- per annum as "*Chakota Theka Chukti*" in lieu of the said land from said Dalbara Singh and consequently, she had been receiving Rs.15,000/- per annum in lieu of the said land from said Dalbara Singh. The said memorandum of agreement/writing dated 21.10.1998 was duly thumb marked by Manjit Kaur and Dalbara Singh and was witnessed by Gurmel Singh, Dev Singh, Bhag Singh, Janak Singh and Baldev Singh. The said memorandum of agreement/writing was got typed by Sh. Gurcharan Singh Dhaliwal, Advocate on the request of the plaintiff and Dalbara Singh. On the basis of aforesaid memorandum of agreement/writing, the application for

admission of memorandum of agreement/writing dated 21.10.1998 was filed by the widow of defendant No.1.

[5]. The said application was opposed by plaintiff/respondent No.1 on the ground that writing was not relied upon by defendant No.1 in the written statement, neither any document was annexed with the written statement, nor any such document was pleaded in the written statement. Pleadings of the application were denied and the application was contested as being not maintainable.

[6]. Additional Civil Judge, Senior Division, Barnala vide order dated 06.04.2018, passed the following order on the aforesaid application:-

“Reply filed wherein the documents sought to be got admitted by defendant Paramjit Kaur had not been admitted by the plaintiff. Accordingly, the application stands disposed of. Now to come up on 20.04.2018 for entire evidence of the defendant.”

[7]. After disposal of the aforesaid application dated 04.04.2018, another application was filed by defendant No.1 for taking specimen thumb impressions of both the hands of plaintiff/respondent No.1 before the Court. The said application was filed on 20.04.2018 by the LRs of defendant No.1.

[8]. Plaintiff/respondent No.1 contested the application on

the ground that document/writing dated 21.10.1998 was never relied by defendant No.1 in the pleadings, neither any issue was framed on the said document, nor any pleadings in respect thereof, were made in the written statement. The writing dated 21.10.1998 was claimed to be beyond pleadings. The application for admission of memorandum of agreement/writing dated 21.10.1998 has already been disposed of on the basis of denial made by plaintiff/respondent No1, therefore, the plea is not legally tenable.

[9]. Additional Civil Judge, Senior Division, Barnala vide impugned order dated 04.05.2018 has also come to the conclusion that the document in question was not relied upon by defendant No.1 in the written statement, therefore, the application was dismissed.

[10]. I have heard learned counsel for the petitioner.

[11]. Learned counsel for the petitioner has reiterated the assertion made before the trial Court on the ground that pleadings in terms of written statement are sufficient to lead such an evidence for taking specimen thumb impressions of both the hands of plaintiff/respondent No.1 for necessary comparison.

[12]. Evidently, no such issue was struck between the

parties, nor any pleadings have come on record. Defendant No.1/petitioner cannot be allowed to lead evidence without there being any proper foundation or pleadings on record. The issues framed do not answer the proposed position. The cumulative effect of all the facts and circumstances of the case, would negate the plea of the petitioner for adopting such a course, which would be inconsistent with the pleadings and material on record.

[13]. In view of aforesaid, the present revision petition is found to be total devoid of merits and the same is accordingly dismissed.

May 29, 2018.

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No