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

**Civil Revision No.5903 of 2018
Date of Decision: 27.09.2018**

Radha Devi

.....Petitioner

Vs

Ram Gopal (since deceased) through his LRs

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. M.K. Singla, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 09.08.2018 passed by the Addl. Civil Judge (Sr. Divn.) Hisar, whereby application filed by the petitioner for allowing her to summon the witness as well as to lead evidence in rebuttal was dismissed.

[2]. Plaintiff/petitioner filed a suit for declaration challenging the Will dated 03.12.2003 executed by Mani Ram in favour of his five sons namely Ram Gopal, Om Parkash, Raj Kumar, Shiri Ram and Pitamber excluding his two daughters namely Radha Devi (plaintiff) and Shakuntla in respect of his immovable properties.

[3]. On the basis of pleadings of the parties, vide order dated 05.09.2016 following issues were framed:-

- “1. *Whether the plaintiff is entitled for decree of declaration as well as consequential relief of permanent injunction as prayed for? OPP*
2. *Whether present suit is not maintainable in the present form? OPD*
3. *Whether plaintiff has no cause of action or no locus standi to file the present suit?OPD*
4. *Whether suit of the plaintiff is non joinder and mis joinder of necessary parties? OPD*
5. *Whether plaintiff has not approached the Hon'ble Court with clean hands and suppressed the material facts? OPD*
6. *Whether suit of the plaintiff is estopped to file the present suit by his own act and conduct?OPD*
7. *Whether civil court has no jurisdiction to decide the matter? OPD*
8. *Relief.”*

[4]. Perusal of issue No.1 would show that the relief qua challenge to the Will is covered under issue No.1 of which onus was fastened upon the plaintiff. Plaintiff has not led any evidence in respect of comparison of signature of Mani Ram appearing on the Will with any admitted documents. During defendant's evidence, factum of gift deed was pleaded by the defendants and thereafter plaintiff sought to get the comparison of signature/thumb impression of Mani Ram appearing on the Will with that of thumb impressions appearing on the gift deed.

[5]. Learned counsel for the petitioner has pleaded case of

fraud during execution of Will and contended that even if specific pleadings in terms of denying thumb impression/ signature on the Will are not made, still the plea is covered under the plea of fraud as it has broader connotation in equity than at law. Intention to defraud or misrepresentation may not be a necessary element, but it includes all acts of omission and concealment which involved breach of legal or equitable duty, trust or confidence justly reposed. Learned counsel referred to **Jai Singh vs. Hari Singh, 1966 PLR 955.**

[6]. On the other hand, learned counsel for the respondents submitted that while leading evidence in affirmative, the plaintiff did not lead any evidence to examine handwriting and fingerprint expert in her substantive evidence. No right was reserved while closing the affirmative evidence for leading evidence in rebuttal. Plaintiff cannot be allowed to lead evidence in rebuttal that too in the form of expert evidence in respect of an issue, the onus of which was on the plaintiff herself.

[7]. Learned counsel by relying upon **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) R.C.R. (Civil) P&H 537 (DB); Jagdev Singh and others vs. Darshan Singh and others, 2007(1) R.C.R. (Civil) 794 (DB)** and **Avtar Singh vs. Baldev Singh, 2015(1) PLR 230 (DB)** submitted that the plaintiff cannot be allowed to lead evidence in rebuttal in respect

of issue No.1 for which she did not lead any evidence in affirmative much less any handwriting and fingerprint expert. No right was reserved to lead evidence in rebuttal at the time of closing of affirmative evidence by the plaintiff, nor any rebuttal issue was framed. Therefore, right to lead evidence in rebuttal stands forfeited in terms of Order 18 Rule 3 CPC.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. It was obligatory on the part of the plaintiff to lead substantive evidence at affirmative stage. The signature/thumb impression of Mani Ram appearing on the Will could have been examined with reference to any other admitted documents. Thumb impression/signature of Mani Ram on the Will were never in dispute, rather the Will was challenged on other grounds of incompetency of the testator in terms of medical faculty being an old person and undue advantage of the beneficiary of the Will. So, the Will was assailed on other considerations in terms of physical disability of the testator of the property being an ancestral in nature. It is only during course of arguments, learned counsel for the petitioner submitted that the Will was assailed on the basis of fraud.

[10]. It is important to note that plea of fraud has to be proved like a trial in the criminal case. Plea of fraud has to be

pleaded and proved on the record. For proving a plea of fraud, the plaintiff has to lead affirmative evidence. In terms of ratio of precedents cited by learned counsel for the respondents, the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff herself. No issue of fraud was claimed by the plaintiff.

[11]. In the light of findings recorded by the trial Court, I do not see any reasons to differ with the same. This revision petition is found to be devoid of merits and the same is accordingly dismissed.

September 27, 2018

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No