

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-6044-2014

Date of decision : 07.08.2018

Basant Lal Bhatia

... Petitioner

Versus

Mahinder Kumar Bhatia and others

... Respondents

***CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH***

Present: Mr.IPS Doabia, Advocate  
for the petitioner.

Mr.Ajaivir Singh, Advocate  
for respondents no.1 & 2.

None for respondents no.3 to 5.

**AMOL RATTAN SINGH, J.(ORAL)**

By this petition, the petitioner challenges the order of the learned Civil Judge (Jr.Div.), Faridabad, dated 05.08.2014, by which the petitioner-defendants' application seeking to lead additional evidence in the form of a handwriting expert, has been dismissed.

Mr.Doabia, learned counsel for the petitioner, points to the fact that a similar application filed by the respondents-plaintiffs on 16.05.2014 (copy Annexure P-5) was earlier allowed by that Court vide an order dated May 30, 2014 (copy Annexure P-1), the said application having been filed at a stage when rebuttal evidence had to be led by the respondents-plaintiffs.

He further submits that the handwriting expert was sought to be examined by the respondents-plaintiffs at that stage despite the fact that even in paragraph 4 of the plaint itself, the document in question (which is

stated to be a family settlement) had been relied upon, with two of the

witnesses to the said document having already died prior to the institution of the suit; and therefore, as per learned counsel, it was actually incumbent upon the plaintiffs to have led evidence at the initial stage itself to prove the said document, and not at the stage of rebuttal evidence.

However, the trial Court having allowed the said application, the handwriting experts' report came against the petitioner-defendant, after which he filed the application (copy Annexure P-8) on 05.08.2014, also seeking to lead additional evidence in the form of a handwriting expert qua the same document, which application has been dismissed by the learned trial Court.

Mr.Doabia therefore submits that a similar opportunity should have been granted to the petitioner as had already been granted to the respondents, despite 'positive evidence' at the first instance not having been led by them, on a document that they had relied upon in the plaint itself.

Mr.Ajaivir Singh, learned counsel for the respondents-plaintiffs, on the other hand submits that simply because the application filed by the plaintiffs had been allowed, for the reasons given in the order Annexure P-1, (to the effect that one attesting witness (petitioner-defendant Basant Lal) had denied the execution of the said document, with other attesting witnesses already having died), the application of the petitioner-defendant need not have been allowed, especially as the handwriting expert who submitted his report, was duly cross-examined by counsel for the petitioners-defendants, which was sufficient opportunity for 'demolishing' the report and consequently, no other evidence in the form of another handwriting experts' report was required to be adduced.

Hence, he submits that the reasoning given by the trial Court in

the impugned order is wholly sustainable and does not call for any interference by this Court.

Having considered the matter, though there may be reasoning to what learned counsel for the respondents-plaintiffs is submitting as regards opportunity having been granted to the defendants to cross-examine the handwriting expert examined by the plaintiffs-respondents, yet, in the opinion of this Court, the initial onus of proving the document in question having been upon the plaintiffs themselves, with them knowing that other than Basant Lal, i.e. the petitioner, all other witnesses had died, I agree with the contention of learned counsel for the petitioner, that in such a situation the defendants also have a right to examine their own expert with regard to the handwriting in question, by way of 'assertive evidence' rather than just simply by relying upon queries put in cross examination to the witness of the plaintiff.

Consequently, this petition is allowed and the impugned order is set aside, with the trial Court now directed to allow examination of the handwriting expert that the petitioner-defendant wishes to examine, after which the trial would proceed forward.

Needless to say, the respondents-plaintiffs would have full opportunity to cross-examine the said witness.

(AMOL RATTAN SINGH)  
JUDGE

**August 07, 2018.**

*D.K./dinesh*

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No