

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

**CR No.5917 of 2018(O&M)
Date of Decision: 06.09.2018**

Harpal Kaur and others

.....Petitioners

Versus

Manpreet Kaur

.....Respondent

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

Present:Mr. Deepak Bhardwaj, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed the order dated 10.08.2018 passed by Civil Judge (Junior Division), Rajpura, whereby application filed by the respondent/plaintiff for file inspection and taking of photographs for the purpose of seeking opinion by the hand writing and finger prints expert was allowed.

[2]. Learned counsel for the petitioners contended that earlier the prayer for amendment of plaint was rejected by the trial Court, against which CR No.1737 of 2015 was decided. Civil revision was decided with a rider that the plaintiff will not lead any further evidence qua amendment. The amendment was in relation to prayer which reads as under:-

“Further suit for declaration to the effect that mutation No.1251 of inheritance of Sadhu Singh sanctioned in favour of the defendants No.1 and 2 on the basis of forged and fabricated Will alleged to be executed by Sadhu Singh is illegal, null and void and is liable to be set aside.”

[3]. In the meanwhile, order dated 16.07.2016 was passed by the trial Court whereby application filed by the plaintiff for framing additional issue was dismissed. CR No.5040 of 2016 was filed and the same was allowed vide order dated 24.07.2017. The operative part of the said order reads as under:-

“Heard.

Applying the ratio of the above-said judgment, the present revision petition is allowed. Order dated 16.07.2016, passed by learned Additional Civil Judge (Sr. Division), Rajpura, is hereby set aside and the trial Court is directed to frame the following issue:-

“Whether Sadhu Singh executed unregistered Will dated 15.10.1990 in favour of defendant Nos.1 and 2? OPD”

Further, the trial Court shall conclude the suit after providing the necessary opportunities to the parties to lead evidence on the additional issue.”

[4]. Perusal of the aforesaid order would show that the additional issue was framed i.e. whether Sadhu Singh executed unregistered Will dated 15.10.1990 in favour of defendant Nos.1

and 2? OPD. In pursuance of aforesaid order, defendants have already led their evidence.

[5]. Since the defendants have already concluded their evidence, therefore, plaintiffs are entitled to lead evidence in rebuttal in respect of an issue, the onus of which was on the defendants. Since the permission was granted by the High Court vide order dated 24.07.2017 passed in CR No.5040 of 2016 and the factum of order dated 04.04.2016 passed in CR No.1737 of 2015 was never disclosed by the petitioners in the said revision petition, therefore, I find that the order passed by the trial Court does not suffer with any error of jurisdiction. This revision petition is accordingly dismissed. Petitioners would be within their rights to file appropriate application in accordance with law.

September 06, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No