

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

CR-6233-2017 (O&M)

Date of decision : 12.01.2018

Pinki Sharma

..... Petitioner

Versus

Ashok Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Sangwan, Advocate for the petitioner.

Mr. Amit Gupta, Advocate proxy counsel for respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition are the orders dated 29.8.2017 (Annexure P-2) and order dated 5.9.2017 (Annexure P-3) passed by learned Civil Judge, (Junior Division), Rewari, vide which while framing additional issues, burden of proof of which was to be on the defendants, it was held that no opportunity of leading evidence is to be given to the plaintiff-petitioner for rebuttal on the additional issues and application for summoning witnesses was dismissed.

It comes out that application filed by plaintiffs No. 1 to 4 for deposit of expenses or witnesses to summon them through process of Court was dismissed. It comes out that vide order dated 29.8.2017 (Annexure P-2), passed by learned Civil Judge (Junior Division), Rewari, additional issues regarding the Will was framed. Apparently, at the evidence stage, the defendant No. 1 had stated that he does not want to lead evidence on the Will.

Learned Civil Judge (Junior Division), Rewari has held that since, the defendant does not want to lead any evidence, therefore, no opportunity is to be granted to the plaintiff. Consequently, summoning of the witnesses was declined.

Learned counsel for the petitioner stated that since the Will has been set up and additional issue in this regard has been framed, therefore, even if the defendant does not want to lead evidence, plaintiff has the right to rebut the same and consequently, summon the witness(es). It is undertaken by learned counsel for the plaintiff-petitioner that plaintiff will take the summon *dasti* and the official witness(s) and private witness(s) shall be produced under his responsibility.

I am of the view that since the additional issue is regarding the Will which have bearing on the merits of the case, even if the defendant does not want to lead further evidence on the said additional issue, plaintiff is to be given an opportunity to lead evidence to disprove the said Will.

In view of above, present petition is allowed to rebut the additional issue for this purpose, as undertaken, only one opportunity will be given. Petitioner-plaintiff shall take the summon *dasti* regarding official witness(s) & private witness(s) and produce them under his responsibility.

In the above noted terms, petition is allowed.

(KULDIP SINGH)
JUDGE

12.01.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No