

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

CR No.7271 of 2017
Date of decision : 01.03.2018

Madanpal and another

...Petitioners

Versus

Ram Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Bajaj, Advocate for the petitioners.

Mr. R.S. Bajwa, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The defendants-petitioners are in the revision petition against the order dated 29.09.2017 passed by the learned trial Court rejecting the application for leading additional evidence.

Learned trial Court has found that the defendants have been granted 10 effective opportunities but they did not produce Finger Print and Handwriting Expert at that time. The Court has noticed that the suit is pending for rebuttal and arguments for the last one year.

I have heard the learned counsel for the parties at length and with their able assistance gone through the paper book.

Learned counsel for the defendants-petitioners has argued that the plaintiff, when, filed a suit had pleaded as under:-

“The plaintiff and his father were taken at Karnal by

Rampal for transferring the ownership of the land of their father in the name of three brothers as per oral family settlement in equal share. The thumb impression of the plaintiff as well as his father were taken and the plaintiff was assured by his brothers that the land of the share of the plaintiff has been transferred in his name. That from that time the plaintiff used to gave the land of his share to his brothers on Theka and used to received the amount of Tekha every year.”

He submits that in fact the plaintiff had never denied his thumb impressions in the plaint, however while leading evidence, the plaintiff produced a Finger Print and Handwriting Expert and tried to prove that the thumb impressions of the plaintiff do not exist in the pleadings filed in the year 1992 and the statement made in the Court. The plaintiff has challenged a civil court decree passed by the Court in the year 1992 by way of this suit.

Learned counsel for the defendants pleads that such evidence was beyond the pleadings and rather contrary to the pleadings, hence, the defendants-petitioners should have been granted opportunity to lead additional evidence.

On the other hand, learned counsel for the plaintiff has vehemently argued that the defendants-petitioners have been granted 10 effective opportunities as recorded in the impugned order. He submits that sufficient opportunity had already been granted, hence, there is no ground to grant further opportunity to the defendants.

Learned counsel for the plaintiff-respondent has submitted that the defendants are only prolonging the pendency of the suit.

This Court has considered the submissions of the learned

counsels for the parties.

From the pleadings extracted above, it is clear that the plaintiff admitted his thumb impressions. Although, it was asserted that the thumb impressions were taken by mis-representation, however, as far as the thumb impressions are concerned, those were not disputed. However, at the time of the leading evidence, the plaintiff produced Handwriting and Finger Print Expert who has opined otherwise.

Although, the report submitted by Finger Print and Handwriting Expert is only an opinion and not binding on the Court, however, in the facts of the present case particularly when the plaintiff has led evidence which is not in consonance with the pleadings, this Court is of the considered opinion that the defendants deserve the opportunity to lead evidence to counter the opinion of the expert.

Taking into consideration the aforesaid facts, impugned order is set aside.

Revision petition is allowed.

The defendants-petitioners are granted one opportunity to produce and prove the additional evidence i.e. the Handwriting and Finger Print Expert.

Learned trial Court is directed to permit the Handwriting and Finger Print Expert to take the photographs in advance. It shall be the duty of the defendants to bring their Finger Print and Handwriting Expert on the date to be fixed by the trial Court for the purpose of recording evidence.

The plaintiff would be granted opportunity to cross-examine the aforesaid witness on the same day, however, it shall be the duty of the

defendants that opinion of the expert be filed in advance.

Learned trial Court is requested to decide the suit within a period of three months from the date of receipt of certified copy of this order.

01.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No