

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 203

CR-8717-2016

Date of decision : 24.09.2018

Karamjit Singh and others

..... Petitioners

VERSUS

Jagmail Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Manmohan Kaur, Advocate, for the petitioners.

Mr. S. K. Singla, Advocate, for respondent No. 2.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 22.11.2016, passed by the Civil Judge (Junior Division), Moga (for short, the Trial Court), permitting re-examination of PW-1 Darshan Singh.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that way back in the year 2008 the respondents filed a suit seeking therein to be declared owners of half share each of land which was detailed and described in the headnote of the plaint (for short, the suit property). Mutations dated 28.02.1991 and 25.02.1991 were also challenged on the ground that such mutations had been sanctioned in favour of the petitioners/defendants on the basis of a forged and fabricated Will of Babu Singh dated 20.03.1988. On being put to notice, the petitioners/defendants appeared before the Trial Court and on 07.01.2010 filed their written statement. Thereafter on 29.07.2013 the petitioners filed a list of documents which included an affidavit dated 17.02.2010 of one Darshan Singh. Thereafter, during the course of leading their evidence, the respondents produced the aforesaid Darshan Singh as PW-1

and tendered his affidavit dated 16.07.2014 in his examination in chief. On 07.11.2016 the aforesaid PW-1 Darshan Singh was cross-examined by the petitioners with regard to his affidavit dated 17.02.2010 in which he had stated that on 24.01.1989 the respondents had asked him to write one page of a document clearly which he had done and that when he had written that document Harbhajan Singh, Sher Singh and Babu Singh had not appended their signatures/thumb impressions in front of him. After PW-1 Darshan Singh had been cross-examined, learned counsel for the respondents made a request to the Trial Court to re-examine him on the issue pertaining to the aforesaid affidavit dated 17.02.2010 which was permitted by the Trial Court, occasioning the filing of the present petition.

Learned counsel for the parties have been heard.

Through the order impugned in the present petition the Trial Court has permitted the respondents/plaintiffs to re-examine PW-1 Darshan Singh with regard to his affidavit dated 17.02.2010. It is not disputed that the reference of his affidavit duly finds mention in the list of documents supplied by the petitioners/defendants on 29.07.2013. That being so, at least on 29.07.2013 the respondents were put to notice by the petitioners with regard to the existence of Darshan Singh's affidavit dated 17.02.2010. In spite of this fact, on 16.07.2014 when PW-1 Darshan Singh was produced by the respondents, he did not make any reference of his aforesaid affidavit dated 17.02.2010 in his examination in chief wherein he had submitted that neither the witnesses nor the executant of the Will in question had appended their thumb impressions/signatures on the document brought to him by the respondents. The respondents having already been put to notice

with regard to the existence of Darshan Singh's aforesaid affidavit dated 17.02.2010 could and should have led whatever evidence they intended to pertaining to the aforesaid affidavit at the very first instance when PW-1 Darshan Singh was produced in his examination in chief and not after the petitioners have cross-examined him and thus exposed their defence. Allowing the respondents to now re-examine PW-1 Darshan Singh would only result in filling up of a lacuna in the respondents' case which cannot be permitted.

In view of the above, the order impugned in the present proceedings is set aside.

Since the suit was filed in the year 2008, the Trial Court is requested to dispose of the same within four months from the date of receipt of a certified copy of this order, in accordance with law and after giving adequate opportunities to both the parties to lead their respective evidence.

24.09.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No