IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8316 of 2018(O&M)
Date of Decision: 06.12.2018

Sohan Lal deceased through LR .....Petitioner

Versus

Rakhi and others .....Respondents

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

Present: Mr. Varun Sharma, Advocate
for the petitioner.

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RAJ MOHAN SINGH, J.(Oral)

[1]. A civil suit for declaration and permanent injunction filed by the plaintiffs/respondents No.1 and 2 was decreed by the trial Court. Defendant No.1/petitioner filed an appeal before the Lower Appellate Court. Plaintiff No.1 and defendant No.1/petitioner are sister and brother. The suit was decreed by discarding the Will in favour of defendant No.1.

[2]. In the appeal, defendant No.1/petitioner sought to lead secondary evidence to prove existence of Will. Thereafter, an application was moved on 25.07.2016 for comparison of thumb impressions of Babu Ram (father of the parties) on Will dated 13.05.1987 with his admitted signatures. Petitioner sought to get

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the application decided before the decision in appeal so as to avail remedy in case of dismissal of the application.

[3]. Lower Appellate Court held that no secondary evidence in the absence of permission for adducing additional evidence could be granted and the application for additional evidence is required to be considered at the time of consideration of appeal on merits.

[4]. In ***Union of India Vs. Ibrahim Uddin and another, 2012(4) RCR (Civil) 727***, it was held by the Hon'ble Apex Court that application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and the evidence sought to be adduced have any relevance or bearing on the issues involved in the litigation. The aforesaid view was reiterated by the Hon'ble Apex Court in subsequent judgment i.e. ***Civil Appeal No.14055 of 2015*** titled ***Andisamy Chettiar Vs. Subburaj Chettiar*** decided on 08.12.2015, wherein the scope of revision petition before the High Court viz-a-viz the application for adducing additional evidence in the present scenario was negated and it was held that High Court cannot allow the production of additional evidence in the revision petition.

[5]. In view of aforesaid facts, there cannot be any escape to the aforesaid proposition of law. In view of above, no

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indulgence can be granted to the petitioner in the aforesaid context.

[6]. Dismissed.

06.12.2018 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

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

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