

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

CR No.8364 of 2017 (O&M)

Date of decision:11.01.2018

Subhash Chand

... Petitioner

Vs.

Phoolpati @ Suman and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Keshav Partap Singh, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

C.M.No.157-CII-2018

Prayer in the application under Section 151 CPC seeking production of copies of the orders dated 09.09.2016 and 08.11.2017 [Annexure P-6 (colly)] in continuation of annexures already on record.

For the reasons stated in the application which is duly supported by an affidavit, the same is allowed and copies of the orders dated 09.09.2016 and 08.11.2017 [Annexure P-6 (colly)] are taken on record.

CR No.8364 of 2017 (O&M)

The present revision petition has been filed against the impugned order dated 18.11.2017 (Annexure P-4), whereby, the objections filed by the defendants have been dismissed and PW-2 Priyanka, daughter of plaintiff No.1 (plaintiff No.2 herself) has been allowed to be examined in the rebuttal evidence.

Learned counsel for the petitioner submits that as per the orders dated 09.09.2016 and 08.11.2017 [Annexure P-6 (colly)], placed on record, *ibid*, the identical issues were framed in both the suits claiming declaration, possession, mandatory injunction and permanent injunction as consequential relief which read as under:-

“1) Whether the plaintiff is entitled to a decree for declaration as prayed for? OPP

2) If so, whether he is entitled to a decree for possession as prayed for? OPP

3) Whether the plaintiff is entitled to decree for mandatory and permanent injunction as prayed for? OPP

3(a) Whether the Will dated 7.2.2012 executed by Joginder Singh and Registered vide No.409 dated 23.11.2012 and the Will dated 14.9.2012 executed by Sh. Hari Singh and registered vide No.318 are duly executed, attested and registered Wills? OPD

4) Whether the suit of the plaintiff is not maintainable? OPD

5) Whether the plaintiff has no locus standi to file the present suit? OPD

6) Whether the plaintiff has no cause of action? OPD

7) Relief.”

Even the additional issue was also framed vide order dated 08.11.2017. The defendants had set up two Wills dated 23.11.2012 and

14.09.2012. The plaintiff had not kept the right “reserve” for leading the evidence in rebuttal and closed the evidence in affirmative, therefore, in view of the ratio decidendi culled out by the Division Bench of this Court in **Avtar Singh and another vs. Baldev Singh and others 2015(5) RCR (Civil) 625**, and two other Division Bench judgments rendered in **Surjit Singh and others vs. Jagtar Singh and others 2007(1) RCR (Civil) 537** and **Jagdev Singh and others vs. Darshan Singh and others 2007(1) RCR (Civil) 794**, contended that the petitioner-plaintiff cannot be permitted to lead evidence by way of an affidavit (Annexure P-5). Even the CD cannot be taken as evidence in view of the provisions of Section 65-B of the Indian Evidence Act, 1872 as the original source of recording is required to be produced which has been negated by the trial Court. The pith and substance of the document, Annexure P-5, is basically required in rebuttal evidence and not in affirmative, therefore, the same cannot be permitted to be placed on record.

I have heard learned counsel for the petitioner, appraised the paper book and gone through the issues, *ibid*.

The factum of preponderance of two Wills aforementioned, on behalf of the defendants is not controverted. The onus of proving the Wills was upon the defendants which always shifts upon the plaintiff obviously in rebuttal. The question *vis-a-vis* whether the application at the hands of the defendants for rejecting the affidavit to be taken in rebuttal was maintainable, in view of the fact that admittedly, the objection with regard

to the documents to be annexed alongwith, Annexure P-5 had been taken note of. The same reads thus:-

“(i) That these documents cannot be exhibited in the evidence who produced it as she cannot authenticate and certify the same, (ii) That there is no original device from which these documents are copies, iii) this evidence cannot be lead in rebuttal, these objections please be considered and decided accordingly.”

The apprehension expressed during the course of arguments is that the aforementioned objection has been rejected, vide impugned order, in my view is not tenable, for, the Court while rejecting the application has used the expression “at this stage”.

In view of the following observations of the trial Court which read thus:-

“Accordingly, the objections raised by ld. Counsel for the defendants are not sustainable and are, hereby, rejected.

At this stage, ld. Counsel for the defendants requested for treating the opportunity given to him for cross-examining the witness as Nil as he intends to file the revision against the objections rejected by this Court.

On the request of ld. counsel for the defendants, the opportunity given to him for cross-examination of the witness is hereby treated as Nil.

Now, to come upon 29.11.2017 for remaining rebuttal evidence, if

any, failing which for arguments.”

The aforementioned expression, in my view, can only be looked into for adjudication of the application and not for the suit to be seen at the time of the arguments. In other words, the objection vis-a-vis admissible documents is kept open in view of the observations of the trial Court. The petitioner is at liberty to raise all the pleas at the time of arguments.

On cumulative reading of the observations of the trial Court, I am of the view that the impugned order does not take away the right of petitioner for raising the objections for adjudication of the suit as the evidence has to be read in conjunction, not in isolation.

Resultantly, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

January 11, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No