

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 907 of 2017 (O/M)
Date of decision : 1.5.2018

Harinder Kaur alias Harbhajan Kaur Petitioner

Versus

Jagtar Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Manuj Nagrath, Advocate,
for petitioner.

Mr. Rajan Bansal, Advocate,
for respondent No. 1.

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 ?
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KULDIP SINGH J. (ORAL)

Impugned in present revision is order dated 19.1.2017 (Annexure-P-5), passed by learned Additional Civil Judge (Senior Division), Barnala, vide which application filed by plaintiff to lead rebuttal evidence was dismissed.

I have heard learned counsels for parties and have also carefully gone through the file.

It comes out that plaintiff has filed an amended suit for declaration and joint possession. He also challenged the judgment and decree dated 24.11.1971 and Will dated 4.3.1999 allegedly executed by Sardara Singh in favour of defendant Jagtar Singh. The issues were framed on 24.10.2007, then on 27.11.2008 and then on 16.5.2013. The point on which plaintiff wants rebuttal is issue No. 5 which is reproduced as under :-

'5. Whether the Will dated 4.3.1999 is illegal, null and void and forged

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and fictitious documents as the same was effected without any legal necessity ? OPP'

Plaintiff wants rebuttal on said issue and states that he wants to examine the expert who compared the thumb impression on said Will. In the application, it is nowhere mentioned that thumb impression on the Will are sought to be compared.

The perusal of issues framed by trial Court shows that burden of proving all issues was on plaintiff. There were some legal issues on which evidence of said expert is not required to be led. The rebuttal evidence is sought to be led on issue No. 5 only. Now, the question is that when burden of disproving Will is on plaintiff, whether he is entitled to rebuttal evidence? The learned counsel for plaintiff has placed reliance on the authorities of this Court in *Surjit Singh and others Versus Jagtar Singh and other*, 2007 (1) RCR (Civil) 537 (DB) and *Jagdev Singh and others Versus Darshan Singh and others*, 2007 (1) RCR (Civil) 794 (DB). The said authorities were later on considered by two Single Benches of this Court in *Urmila alias Pinki Versus Gulshan Rai and others*, 2017 (4) RCR (Civil) 161 and *Ajmer Singh Versus Gurmit Singh and others*, 2017 (2) PLR 853. After considering the said authorities, it was held that when burden of proving issues is on plaintiff, he is not entitled to lead evidence in rebuttal. Here, plaintiff has challenged the Will. The burden of proving that Will is forged and fictitious was on plaintiff in rebuttal. He led the evidence to prove said issue. Thereafter, defendant led evidence of expert to rebut evidence led by plaintiff.

I am of the view that when burden of proving an issue was on the plaintiff, he is not entitled to lead rebuttal evidence. Moreover,

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application is vague. It is not stated as to which disputed thumb impression is sought to be compared. There is no ground to interfere in impugned order, passed by trial Court. Consequently, revision is dismissed.

(KULDIP SINGH)
JUDGE

1.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No