

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

**S.A.O. No. 31 of 2016 (O&M)
Date of Decision: November 20, 2018**

Tek Bahadur Singh

..... Appellant (s).

VERSUS

Bharpur Kaur

..... Respondent (s)

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. I.S. Brar, Advocate
for the respondent.

SURINDER GUPTA, J.

This is appeal against the order dated 14.3.2016 passed by the first Appellate Court whereby the application of respondent-Bharpur Kaur filed under Order 41 Rule 27 of C.P.C. to lead evidence to prove signature of Malkiat Kaur and get the same compared with her signatures on the Will propounded by the appellant was allowed. On allowing the application under Order 41 Rule 27 CPC, judgment and decree passed by the court below was set aside and the case was remanded to the trial court/successor court with direction to decide the suit afresh after giving opportunity to the parties to lead evidence.

2. Learned counsel for appellant has argued that firstly, the order passed by the first Appellate Court allowing the application under Order 41 Rule 27 CPC is not tenable as the respondent had contested the suit and was having opportunity to produce evidence with regard to signatures of Malkiat

Kaur and get the same compared with her signatures on the Will dated

10.2.2008. He has further argued that even if the order allowing the additional evidence is sustained, the first Appellate Court instead of remanding the case could call report of trial court and decide the appeal on merits.

3. Learned counsel for respondent has argued that entire dispute revolves around the unregistered Will dated 10.2.2008 of Malkiat Kaur which was got registered after her death on 15.5.2008. The respondent is daughter of Malkiat Kaur. Earlier she was not having any information that signatures of Malkiat Kaur were available with Punjab & Sind Bank, Main Branch, Faridkot where she was having saving bank account. It was during the pendency of appeal that she came to know about her signatures and sought opportunity to get signatures of Malkiat Kaur on the Will compared with her specimen signatures in the bank record. The first Appellate Court while allowing her application under Order 41 Rule 27 CPC has not looked into the above facts, however, he has no objection if the impugned order is modified and instead of remanding the case, report of trial court on the basis of additional evidence and evidence lead in rebuttal by the appellant be called and appeal be decided on merits.

4. The appellant and the respondent are children of Malkiat Kaur whose Will dated 10.2.2008 is in dispute. Admittedly, it was got registered after death of Malkiat Kaur. The trial court has upheld the Will dated 10.2.2008 and while decreeing the suit held that plaintiff-appellant as owner in possession of suit land. During the pendency of appeal, respondent moved application that she be permitted to call the witness from Punjab & Sind Bank, Main Branch Faridkot along with account opening form of saving bank account No. 938 of Malkiat Kaur to prove her signatures in the

bank record and to examine Sanjeev Sharma Hand-writing Expert to compare the signatures of Malkiat Kaur in bank record with her signatures on the Will. The respondent is disputing the Will and has alleged the same to be forged and fabricated document. She has alleged that earlier it was not in her knowledge that Malkiat Kaur was having bank account. The first Appellate Court looking into the above plea of respondent and the facts of the case allowed the application under Order 41 Rule 27 CPC filed by respondent. On allowing the application, it was observed that entire case is based on proof of execution of Will as such in view of the permission given to the respondent to lead additional evidence to prove that Will is a forged document, judgment and decree of lower court was set aside.

5. So far as the order passed by first Appellate Court allowing the application under Order 41 Rule 27 CPC is concerned, I find no legal or factual infirmity therein calling for interference as such the same is maintained. However, in view of the submissions of learned counsel for respondent and keeping in view the fact that the first Appellate Court could decide the appeal on merits after calling report of the trial court regarding additional evidence produced by the respondent and the evidence produced in rebuttal by the appellant, this appeal is partly allowed and the order passed by the Additional District Judge, Faridkot dated 14.5.3.2016 is sustained to the extent it allowed the application of respondent to lead additional evidence. The order of first Appellate Court setting aside the judgment of lower court and remanding the case is set aside. The first Appellate Court is directed to take the appeal on record, call for the report of lower court regarding execution of the Will on the basis of additional evidence and evidence in rebuttal produced by the appellant and proceed to

decide the appeal on merits in accordance with law.

6. Parties are directed to appear before the first Appellate Court on 11.12.2018.

7. Keeping in view the above facts and circumstances, parties are left to bear their own costs.

November 20, 2018
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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***