

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

Sr. No.209

**C.R. No.391 of 2018
Date of decision: 20.03.2019**

Tarlochan Singh

....Petitioner

versus

Savinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. H.K. Brinda, Advocate
for the petitioner.

Mr. Himanshu Chhabra, Advocate
for respondent No.1.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 08.12.2017 passed by the Civil Judge (Junior Division), Roopnagar (for short – the Trial Court) dismissing the application filed by the petitioner through which he had sought to lead additional evidence.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No.1 filed a suit seeking therein possession of a house which was detailed and described in the head note of her plaint (for short – the suit property). Recovery of mesne profits for the use and occupation of the suit property, alongwith interest, was also sought. Respondent No.1 had primarily based her claim on a registered Will dated 16.03.2006 purportedly executed by Surta Singh, father of the parties. On being put to notice, the petitioner, who was

defendant No.1 in the suit, appeared before the Trial Court and filed his written statement through which he inter-alia submitted that the aforesaid Will of Surta Singh, which was being relied upon by respondent No.1, was forged and fabricated. Thereafter, the Trial Court framed issues. While respondent No.1 was in the midst of leading her evidence it came to light that the Trial Court had not framed any issue with regard to the genuineness of the Will in question. Therefore, an application was filed by respondent No.1 seeking therein framing of an additional issue with regard to the genuineness of the Will. Such application was allowed by the Trial Court and thereafter, respondent No.1 concluded her evidence after which the petitioner led his entire evidence. Respondent No.1 then led evidence in rebuttal and when the matter was listed for final arguments, the petitioner filed an application for leading additional evidence. Through that application, the petitioner sought permission of the Trial Court to get photographs of the signatures of Surta Singh on the Will as also on a written statement and power of attorney of Surta Singh filed in a case titled as Tarlochan Singh Vs. Surta Singh and then get the same compared by a handwriting expert. Such application was dismissed by the Trial Court occasioning the filing of the present petition.

Learned counsel for the parties have been heard.

In September 2012, respondent No.1 filed her suit through which she claimed possession of the suit property. She based her claim on a registered Will dated 16.03.2006 purportedly executed by Surta Singh. On 01.08.2013, the petitioner/defendant No.1 filed his written statement through which he stated that the Will of Surta Singh, being relied upon by respondent No.1, was a forged and fabricated document. After framing of

issues an additional issue with regard to the genuineness of the aforesaid Will was also framed by the Trial Court. Thereafter, respondent No.1/plaintiff led her evidence after which the petitioner/defendant availed numerous opportunities to lead his evidence and closed the same vide separate statements on 03.11.2017 and 09.11.2017. During the course of leading his evidence, he did not attempt to lead any expert evidence to prove that Surta Singh's Will was forged and fabricated especially when this was his stand in his written statement filed way back in August 2013 as also during the time when he was granted numerous opportunities to lead his evidence.

The only explanation given before this Court to justify the delay in the filing of the application for additional evidence is that the signatures of Surta Singh on the aforesaid written statement and the power of attorney were produced by respondent No.1 by way of rebuttal evidence. Such explanation is not found worthy of acceptance for the reason that way back in August 2013, it was the petitioner's stand that Surta Singh's Will, being relied upon by respondent No.1, was a forged and fabricated document. The written statement as also the power of attorney of Surta Singh, which was produced by respondent No.1 by way of rebuttal evidence, was on the judicial record in an earlier civil suit filed by the petitioner against Surta Singh. Thus, the petitioner was well aware of the documents produced by respondent No.1 by way of rebuttal evidence and was well within his rights to get compared the signatures of Surta Singh on his Will with his signatures on the aforesaid documents or any other document which would contain his admitted signatures like in the Bank, on a cheque etc. at an earlier stage of the trial.

It can also not be ruled out that the petitioner had filed his application to delay the disposal of respondent No.1's suit especially when it is admitted that the petitioner is in possession of the suit property of which respondent No.1 claims possession through her suit.

In view of the above, no merit is found in the present petition and resultantly, the same is dismissed.

Respondent No.1 filed her suit in September 2012 and it is the admitted position that it is now listed for final arguments. That being so, the Trial Court is requested to dispose of respondent No.1's suit expeditiously but not later than one month from the date of a receipt of a certified copy of this order, in accordance with law.

(DEEPAK SIBAL)
JUDGE

March 20, 2019
Jyoti 1

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