

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4556 of 2016 (O&M)

Date of decision:31.01.2019

Gurdev Singh and others

... Petitioners

Vs.

Joginder Singh (deceased) through Lrs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Dappar, Advocate
for the petitioners.

Mr. Kanwaljeet Singh Derabassi, Advocate
for LR's of respondent.

AMIT RAWAL J.

The present revision petition at the instance of the petitioner-decree holder is directed against the impugned order dated 04.05.2016 whereby an application seeking permission to examine the Handwriting and Fingerprint Expert in rebuttal, has been dismissed.

The petitioner-plaintiffs filed a suit for declaration to the effect that they have become the owners in possession of the land measuring 40 bighas 11 biswas to the extent of 1/6th share in equal share of the suit land on the basis of the judgment and decree dated 27.10.1983 with a consequential relief of permanent injunction seeking restrained against the defendants from alienation, transferring and interfering into peaceful possession.

The defendants opposed the suit and also set up counter claim and challenged the decree dated 27.10.1983 to be forged and fabricated document. It was asserted when judgment and decree was passed Pritam Singh was not owner to the extent of 1/3 share out of total land measuring 153 bighas 2 biswas. When the evidence was over of counter claim of the defendants, the petitioners submitted an application (Annexure P-6) for taking assistance of the Handwriting and Finger Print Expert on the premise that defendants had taken the assistance of R.V.Vashist, Handwriting and Finger Print Expert to examine the signatures of Pritam Singh, who had suffered a judgment and decree at Civil Court, Rajpura.

Learned counsel appearing on behalf of the petitioners submitted that the trial Court in the aforementioned suit framed the issues and regarding issue no.8, onus was upon the counter claimant therefore, the plaintiffs are entitled to lead evidence.

Per contra, learned counsel appearing on behalf of the LR's of respondent opposed the application and submitted that since the plaintiffs were claiming the relief on the basis of judgment and decree, once it was stated to be forged and fabricated document, assistance of expert should have been taken by leading evidence in affirmative, it tantamounts to filing up the lacunae which is not permissible in law and thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

It would be in the fitness of things to extract the issues. The same reads thus:-

- “1. Whether the plaintiffs are owners in possession of the land measuring 40 bighas 1 biswa to the extent of 1/6th share as mentioned in the head note of the plaint?*
- 2. Whether the plaintiffs are entitled to the decree for declaration as prayed for?OPP*
- 3. Whether the plaintiffs are entitled to the decree for permanent injunction as prayed for?OPP*
- 4. Whether the suit of the plaintiffs is legally maintainable in the present form?OPP*
- 5. Whether plaintiffs have no locus standi to file the present suit?OPD*
- 6. Whether the suit of the plaintiffs is barred by time?OPD*
- 7. Whether the plaintiffs are estopped by his act and conduct from filing the present suit?OPD*
- 8. Whether the defendant is entitled to the relief of as claimed in the counter claim?OPD/counter claimant.*
- 9. Relief”*

On perusal of issue no.8, it is evident that onus was upon the defendants-counter claimants. Whatever the evidence has been led, the petitioner-plaintiffs are required to be given chance in rebuttal as the judgment and decree has been assailed. There would have been force in the argument of learned counsel for the respondent, had there not been counter

claim and there would not have been any issue of rebuttal.

The trial Court in my view remained oblivious of
aforementioned fact and dismissed the application by holding that it was an
intentional act to delay the adjudication of the lis. I am of the view that
impugned order is fallacious and infirm and the same is hereby set aside.
The application is allowed.

Resultantly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

January 31, 2019
savita

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