

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1304 of 2019 (O&M)
Date of decision: 27.05.2019

Manjit Kaur

...Petitioner

Versus

Tej Kaur and others

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. H.S. Jalal, Advocate for the petitioner.

B.S. Walia, J (Oral),.

1. Challenge in the revision petition under Article 227 of the Constitution of India is to order Annexure P/8 dated 02.01.2019, vide which, the application of the petitioner/defendant/judgment debtor (hereinafter referred to as 'the petitioner') for examining handwriting and finger print expert was dismissed.
2. Prayer is for grant of one effective opportunity for examining handwriting and finger print expert.
3. Brief facts of the case leading to the filing of the revision petition are that the respondent/plaintiff/decreed-holder (hereinafter referred to as 'the respondent') filed a suit for declaration that she was legal heir of deceased Jagsir Singh being his real mother and was entitled to receive 1/4th of the amount due under policy No.161269461 dated 07.08.2000 for Rs.1 Lakh and policy No.161048654 of 1998 for Rs.50,000/- in the name of deceased Jagsir Singh besides she was also entitled to receive 1/4th of the provident fund,

gratuity, pension, arrears of salary and other service benefits of deceased Jagsir Singh besides grant of a mandatory injunction directing respondent Nos.4 and 5 i.e. Life Insurance Corporation of India to pay 1/4th share of the insurance amount along with interest accrued thereon as also for restraining the petitioner from withdrawing 1/4th share of the amount of the said two policies and provident fund etc.

4. The learned trial Court passed the decree in favour of the respondent to the extent of 1/4th share in two insurance policies and GPF but dismissed the prayer for grant of mandatory injunction. Aggrieved by the order of the learned trial Court, the respondent preferred an appeal, whereupon, the learned Appellate Court modified the decree to the extent that the widow be restrained from receiving the share of mother of deceased to the extent of 1/4th share from the insurance policies as well as from GPF. Thereafter, the respondent filed an execution petition dated 12.08.2016 before the learned Executing Court, in which, the petitioner filed objections that as per judgment and decree, the respondent was entitled to 1/4th share out of the GPF amount, whereas in the present case, a panchayati compromise dated 25.10.2016 had been entered into between the parties, as per which, the petitioner had paid 1/4th share out of insurance policy No.161048654 for Rs.50,000/- to the respondent besides 1/4th share of GPF amount from the total amount of GPF received by the petitioner. The objection petition was contested by the respondent denying the compromise, whereupon the learned executing Court framed the following issues: -

- (i) Whether the DH entered into compromise dated 25.10.2010 with the objector? (onus to proof on objector)

(ii) Whether the objections are not maintainable? (onus to proof on decree-holder).

(iii) Relief.

5. One of the issue was as to 'whether the respondent had entered into compromise dated 25.10.2010 with the petitioner' with the onus of proof being on the petitioner. During the course of leading evidence, the respondent denied her thumb impression on the compromise, whereupon the petitioner moved an application for getting compared the thumb impression of the respondent on the compromise with her admitted thumb impression from handwriting and finger print expert. The same was contested by the respondent. Thereafter, the learned Executing Court vide its order dated 02.01.2019, dismissed the aforesaid application.

6. The impugned order has been challenged on the ground that dismissal of the application on the ground that no provision had been mentioned, was legally unsustainable as the application for comparison of thumb impression from handwriting and finger print expert is always moved under Section 45 of the Evidence Act, therefore, the application could not have been dismissed on the aforesaid flimsy ground. Secondly, that the learned Executing Court had lost sight of the fact that the application had been moved during the course of evidence of the petitioner, therefore, it could not be said that the petitioner had concluded her evidence, therefore, there was no question of filling up of lacuna in the evidence. Thirdly, although by way of leading oral evidence, the petitioner had proved the compromise, which falsified the stand of the respondent of denial of compromise, however, since the respondent had disputed her thumb impression, it had become

necessary to compare the thumb impression from an expert in order to prove the stand of the respondent to be wrong.

7. On 07.03.2019, counsel for the petitioner requested for an adjournment to refer to the zimni orders to show that the evidence of the petitioner in affirmative had not been concluded. On 15.03.2019 and 09.04.2019, more time was requested to place on record copy of zimni orders. Thereafter, an application had been moved for placing on record zimni order dated 12.07.2018 as Annexure P/9. A perusal thereof reveals that the evidence of the petitioner was closed by order, therefore, submission of counsel for the petitioner on 07.03.2019 that the petitioner was still leading evidence in affirmative and the same had not been closed is factually incorrect.

8. I have considered the submission of learned counsel.

9. A perusal of the impugned order reveals that the same was passed on the basis that the petitioner was in knowledge of denial of the compromise by the respondent and evidence of the petitioner had already been concluded, therefore, the application could not be allowed to fill up the lacuna in the evidence of the petitioner. To my mind, the impugned order does not call for any interference for the reason that the objection petition was contested by the respondent by denying the compromise, whereupon the learned Executing Court framed inter-alia the issues with regard to 'whether compromise had been entered into by the respondent with the petitioner with the onus to proof in respect thereto being placed on the petitioner'. As has been noted above, on 12.07.2018, order was passed that no OW was present and finding no justification to grant another opportunity for concluding the entire evidence of OW, the same was closed by an order, where after the case was fixed for the evidence of the respondent for 23.07.2018. On query,

learned counsel stated that order dated 12.07.2018 passed by the learned Addl. Civil Judge (Senior Division), Bathinda closing the evidence of the petitioner was never challenged. The denial of thumb impression was to the knowledge of the petitioner ever since the filing of the reply and framing of issues. It was for the petitioner to lead whatever evidence she wished to lead qua issue No.1, the onus of which had been placed on her. Once, the petitioner was in knowledge of the denial of the compromise by the respondent and had already concluded her evidence leading to passing of order dated 12.07.2018, thereafter, moving of an application for permission to examine handwriting and finger print expert for comparison of thumb impression of the respondent on account of denial in her deposition about the thumb impression was not maintainable, as evidence of the petitioner had already been closed vide order dated 12.07.2018 and said order was never challenged.

10. In the aforementioned circumstances, additional evidence in the garb of an application to examine handwriting and fingerprint expert for comparison of thumb impression of the respondent on the alleged panchayati compromise dated 08.12.2010, cannot be allowed as the same would amount to filling up of lacuna. Moreover, no ground whatsoever has been mentioned in the application bringing the case within the parameters of being allowed to lead additional evidence. Onus of issue No.1 was rightly placed by the learned Executing Court on the petitioner and the petitioner having failed to lead any evidence in respect of said signatures of the respondent at the stage of leading evidence in affirmative, now after closure of her evidence by order dated 12.07.2018 and on denial of the signatures on the alleged panchayti compromise by the respondent, is not entitled to seek permission to examine a

handwriting and finger print expert as the same would tantamount to fill up of lacuna and circumvent order dated 12.07.2018, whereby evidence of the petitioner was closed by order.

11. Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

27.05.2019
rajesh.k.khurana

(B.S. Walia)
Judge

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