

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

**C. R No. 8215 of 2019
Date of decision : 19.12.2019**

Kulvir Singh

....Petitioner

versus

Gurmukh Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. MJS Bedi, Advocate
for the petitioner.

RITU BAHRI, J. (Oral)

Challenge in this petition is to order dated 20.11.2019 passed by learned Addl. Civil Judge (Jr. Divn.), Phul whereby application dated 15.11.2019 under Section 151 CPC for additional evidence and examination of expert, has been allowed.

The respondent/plaintiff filed a suit for declaration that he is owner in possession of the suit property of the deceased Hamir Kaur on the basis of registered will dated 22.12.2014 and further seeks declaration to the effect that mutation sanctioned in favor of petitioner is liable to be set aside along with relief of possession as well as injunction against the petitioner.

Learned counsel for the petitioner submits that the issues were framed on 08.07.2015 and respondent/plaintiff after availing sufficient opportunities conclude his evidence on 11.03.2016 by recording the statement of the counsel for the plaintiff/respondent. At the stage of

evidence of the defendant, the respondent/plaintiff filed application under Order 14 Rule 1 read with Section 151 CPC for framing of proper and necessary issues and the same was allowed, vide order dated 13.10.2018 (P-4) and the respondent/plaintiff was granted opportunity to lead the entire evidence on the file with regard to the issues. Thereafter, petitioner/defendant closed his evidence on 15.11.2019 and when the case was fixed for arguments, the plaintiff/respondent moved an application under Section 151 CPC for leading additional evidence. A reply dated 19.11.2019 (P-9) was also filed by the petitioner to the said application but the same was allowed vide impugned order dated 20.11.2019.

Learned counsel for the petitioner submits that at the belated stage, the application should not have been allowed. The evidence should be led in affirmative when the case was fixed for evidence of the plaintiff.

Reference has been made to judgment of this Court in a case of ***Nathu Ram Prem Chand vs. Jagroop Singh, 2014 (6) PLR (Civil) 629*** wherein witness who had made bahi entries was available throughout the proceedings but was not examined by the plaintiff and closed his evidence. It was held that such type of evidence is to overcome negligence or lacunae left in its evidence and cannot be allowed. The writ petition was dismissed.

The judgment cited by learned counsel for the petitioner is not applicable to the facts of the present case, as in the present case, the respondent/plaintiff came to know about the will in question after receiving the copies of judgment and decree dated 06.11.1980, which were applied by him on 30.10.2019 and same were issued only on 14.11.2019 i.e during the pendency of the evidence of the defendant.

Thus, the application has rightly been allowed as no prejudice

is going to be caused to the defendant if plaintiff get examined expert witness.

Accordingly, order dated 20.11.2019 does not suffer from any infirmity or illegality and thus, no interference is required.

Dismissed.

19.12.2019

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No