

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

CR-6856-2018 (O&M)
Date of decision : 09.01.2020

Kanta Rani and another

...Petitioners

Versus

Parveen Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Arora, Advocate for the petitioners.

Mr. Sandeep Jain, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-petitioners are in the revision petition against the order passed by the learned trial Court dismissing the application for permission to examine the Handwriting and Finger Print Expert to prove that the alleged Will dated 08.01.1993 is forged and fabricated document.

Plaintiffs filed a suit for separate possession of half share in the shop which was originally owned by the common ancestor on the basis of natural succession. It was further asserted in the plaint that the alleged writing/Will dated 08.01.1993 allegedly executed by the common ancestor late Sh. Om Parkash is forged and fabricated. In the written statement, defendants set up the alleged Will dated 08.01.1993 bequeathing the property in dispute in their favour.

Learned trial Court framed an issue with regard to the validity

of the Will, onus to prove the same was placed on the defendants. Defendant No.1 moved an application for shifting of onus to prove that the Will is forged or fabricated document to the plaintiffs. However, the same was dismissed by the Court vide order dated 20.07.2018.

Plaintiffs led their evidence in affirmative. Thereafter, the defendants led their evidence.

Since, the onus to prove the issue with regard to the Will was on the defendants, therefore, the plaintiffs had a right to lead evidence in rebuttal. Thus, the plaintiffs filed an application for permission to examine the expert witness as noticed above. It was pleaded by the petitioners-plaintiffs that under the Right to Information Act, now they have got the documents which bear the signatures of their predecessor-Om Parkash.

Learned trial Court dismissed the application by recording as under:-

*“5. To my view, the applicant/plaintiff should have examined the expert witness in his evidence in affirmative at the time of plaintiff's evidence because he challenged the execution of Will dated 8.01.1993 being forged and fabricated document. Meaning thereby, applicant/plaintiff was in knowledge of the same. This view of mine got support from **Ram Kumar Vs. Raj Kumar and others, 2014(2) PLR 536 (P&H)**. Therefore, now the applicant/plaintiff cannot be allowed to examine additional witness or to examine evidence in rebuttal regarding which he had knowledge right from the filing of the present suit.”*

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

In the considered view of this Court, learned trial Court has committed fundamental error. The plaintiffs cannot be called upon to lead evidence in negative while leading their evidence with respect to the issue, onus to prove whereof is on the defendants. The defendants would lead their affirmative evidence for the first time when opportunity is given to them. The plaintiff's right to lead rebuttal evidence arises only thereafter. Reference in this regard can be made to two Division Bench judgment of this Court in the case of Surjit Singh and others Vs. Jagtar Singh and others, 2007(1) PLR 552, and in the case of Jagdev Singh and others Vs. Darshan Singh and others, 2007(1) RCR (Civil) 794.

In view of the aforesaid, the plaintiffs have a right to lead rebuttal evidence on the issue with regard to the validity of the Will. Hence, same cannot be denied to them. Accordingly, the order under challenge is set aside. The plaintiffs are given an opportunity to lead rebuttal evidence.

Keeping in view the fact that the suit is pending for the last 7 years, learned trial Court is requested to make sincere endeavour for disposal of the suit as soon as possible.

In view of the aforesaid, the present revision petition is allowed.

09.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No