

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

117

**CR No. 897 of 2020 (O & M)
Date of decision :7.2.2020**

Piara Singh Kailay

.....Petitioner

Vs.

Sohan Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sandeep Chopra, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India by the plaintiff in the original suit, praying for setting aside the impugned order dated 8.1.2020, passed by Civil Judge (Junior Division), Ludhiana, whereby his application for permission to lead additional evidence has been dismissed. It is further prayed that petitioner be granted effective opportunity to conclude his evidence.

For the convenience, the parties hereinafter are referred to as the plaintiff and the defendant, as they were mentioned in the original suit.

It is contended by learned counsel for the plaintiff that the plaintiff has got the report of the Hand Writing Expert qua writing/signatures on the Will claimed by the defendants. However, the same could not be produced and the Expert could not be examined because even the original Will was not produced by the defendants at that particular time. Besides this, there were other witnesses, who though were mentioned in the list of witnesses, however, the same could not be examined because some of them did not turn up despite

deposit of the necessary expenses. Subsequently, the Will has been sought to be proved by the defendants. Therefore, the plaintiff is, otherwise also, entitled to reply and to rebutt the same by leading the relevant evidence. Hence, the plaintiff deserves to be granted opportunity to lead the necessary evidence. It is further pointed out that the plaintiff is an NRI of 80 years of age and he is ordinarily residing in Canada. In the suit he is being represented by the special power of attorney holder. Therefore, he was not even properly kept abreast of the state of evidence in the present case. However, now the plaintiff has come to know that certain witnesses, though were summoned, had not appeared and have not been examined. Still further, he has come to know that certain witnesses are necessary for establishing the case. Hence, the application was moved for additional evidence.

Having heard learned counsel for the plaintiff and having perused the case file, this Court finds that the trial Court has rightly recorded that the the plaintiff has availed more than 43 opportunities. The perusal of the case file also shows that earlier the evidence of the plaintiff was closed vide order dated 1.5.2018. Hence, on the face of it, this Court does not find any illegality or perversity with the observations made by the trial Court. However, the other aspect of the matter is that the plaintiff claims to be a person, who ordinarily does not reside in India. He is being represented through the special power of attorney holder. In that situation, the submissions of learned counsel for the plaintiff that the plaintiff was not properly kept abreast of the state of evidence led on file; at the appropriate time; cannot be altogether brushed aside. Otherwise also, the plaintiff is required to establish his case to bring it within the preponderance of probabilities. Hence, it would be unjustified if he is

denied the opportunity to lead the evidence, which otherwise would be relevant, and may be necessary for just decision of the case. Otherwise also, the evidence of the defendant has just been concluded. In the evidence, he has led certain evidence qua the Will claimed by him. Therefore, the plaintiff, would otherwise also be entitled to reply the same by leading the relevant evidence. In this situation, it would not be unjustified if the plaintiff is granted additional opportunity to lead the evidence, which was left out earlier, however, subject to the plaintiff being put to appropriate financial burden.

In view of the above, the impugned order dated 8.1.2020 is modified and the present petition is disposed of with a direction to the trial Court to grant to the plaintiff two effective opportunities to lead the evidence as mentioned in the application moved by him, at his own risk and responsibility, however, subject to payment of agreed amount of Rs. One lakh as costs. The costs is ordered to be deposited with the Poor Patients Welfare Fund, PGI, Chandigarh, within a period of two weeks.

It is further clarified that the evidence on the part of the plaintiff shall be accepted by the trial Court; only after he produces before that Court the receipt of having deposited the costs as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

7.2.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No