

112 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3015-2021

Date of Decision: 30.11.2021

ASHOK KUMAR

....Petitioner

Versus

SHARBOO

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Virendra Rana, Advocate
for the petitioner.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of the Constitution of India is for setting aside the impugned order dated 17.11.2021 (Annexure P-7) passed by Additional Civil Judge (Senior Division), Rewari, whereby an application moved by the plaintiff-respondent to examine the handwriting expert in rebuttal evidence has been allowed.

2. Learned counsel for the petitioner submits that in Civil Suit-2431-2015 titled as 'Sharboo vs Ashok Kumar', the Will is under challenge. He further submits that the signatures are not in dispute and the plaintiff has a right to move an application only at the time of affirmative evidence and not at the stage of rebuttal evidence. Learned counsel relied upon judgment of this Court rendered in **Civil Revision No.5903 of 2018** titled as **Radha Devi vs Ram Gopal (since deceased) through his LRs** decided on **27.09.2018**, in support of his arguments.

2. I have heard learned counsel for the petitioner and gone through the case file.

3. The judgment relied upon by learned counsel for the petitioner is not relevant in the facts and circumstances of the present case. The plaintiff has a right for rebuttal evidence on issue No.5 of which the onus of proof is on the defendant and thereby no prejudice is going to be caused to the petitioner. Hence, no interference is called for in the order assailed herein, which is premised, *inter alia*, on the following reasoning :

“5. By moving the present application, the applicant wants to summon the Fingerprints & Handwriting Expert in rebuttal against the issue No.5. Issue no.5 reads as follows:

“whether the registered Will dated 30.10.2013 was validly executed in favour of the defendant? OPD”

Thus, from this issue, it is clear that the onus to prove the same was on the defendant and he has already discharged his burden by leading his evidence. Now, the burden shifted to the plaintiff to disprove the evidence led by the defendant regarding the validity of the alleged Will. Thus, it does not lie in the mouth of the defendants to say that they will not get any opportunity to rebut the evidence of the plaintiff in rebuttal as they have already led their evidence on the said issue. Thus, the plaintiffs are entitled to lead evidence in rebuttal as sought for. However, it is also evident from the file that almost 20 effective opportunities were granted to the plaintiffs to lead their evidence in rebuttal except the opportunities given to them during the restricted functioning of the courts in the COVID-19 pandemic. Thus, the plaintiffs are liable to compensate the defendants for the same.

6. Therefore, in view of the above discussion, the application in hand is liable to be allowed. Accordingly, the application in hand stands allowed subject to costs of Rs.2,000/- to be paid by the plaintiffs to the defendants proportionately.”

4. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

5. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement with.

6. Dismissed.

November 30, 2021
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No