

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

CR-148-2018 (O&M)

Date of decision: 10.11.2022

Sarwan Singh alias Sarban Singh

....Petitioner

Versus

Sukhbir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate for the petitioner

Mr. Bhag Singh, Advocate for respondent no.1 to 3

ANIL KSHETARPAL, J (Oral)

CM-7648-CII-2022

Allowed as prayed for.

Main case

1. The petitioner herein is the plaintiff. His suit for grant of decree of declaration that he is owner in possession of 25 kanals and 14 marlas of land, on the ground that his two brothers Sh.Santokh Singh and late Sh. Prem Singh, have relinquished their share, is pending before the trial court. The petitioner's application for permission to lead rebuttal/ additional evidence in order to examine the fingerprint and handwriting expert to prove the signatures of late Sh.Prem Singh, on affidavit Ex.P-2 with his admitted signatures on the power of attorney, has been dismissed. Challenging its correctness the present revision petition has been filed.

2. Relevant facts in brief are as under:-

Three brothers namely Sh.Sarwan Singh, Sh.Prem Singh

and Sh.Santokh Singh had filed a previous suit, claiming ownership of the suit property on the ground of having perfected their title by way of adverse possession, which was dismissed by the trial court. However, during the pendency of the first appeal, a settlement was arrived at between the parties and the plaintiff agreed to purchase the suit property from the defendants on payment of Rs.1,10,000/- per acre. In this suit, it is the case of the plaintiff that he, exclusively paid the entire amount, whereas, his two brothers namely Sh.Santokh Singh and late Sh.Prem Singh relinquished their share, by executing affidavits, on the same day. It has been asserted that the plaintiff paid the amount after disposing of his other property. Sh.Santokh Singh has admitted the case of the plaintiff, whereas, late Sh.Prem Singh, through his legal representatives, is contesting the same. On examination of the pleadings, the trial court culled out the following issues:-

“1.Whether the entries in the revenue record in the name of defendants no.1 to 3 with regard to the suit land measuring 25 kanals 14 Marlas situated at village Sambhalkha are illegal, null and void and not binding upon the rights of the plaintiff? OPP.

2. Whether the plaintiff is entitled to the relief of declaration as prayed for by him? OPP.

3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD.

4. Whether the present suit is not maintainable in view of the compromise arrived at between the parties in the earlier civil suit, if so, its effect?OPD.

5. Relief.

No other issues pressed or claimed. Now the case is adjourned to 29.7.2011 for Pws at own responsibility. Dasti summons may be taken if so desired.”

3. After the plaintiff had led his affirmative evidence, the defendants (legal representatives of Prem Singh) examined a handwriting and finger print expert in evidence to prove that the signatures of late Sh.Prem Singh, on the aforesaid affidavit, are forged. Immediately after the defendants closed their evidence, the application for examining another handwriting and fingerprint expert was filed by the plaintiff, which has been dismissed.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. On the one hand, learned counsel representing the petitioner contends that in view of issue no.4, the plaintiff is required to be given an opportunity to lead rebuttal evidence because the onus to prove the same was on the defendants. In the alternative, he submits that he may be permitted to lead additional evidence. On the other hand, learned counsel representing the respondents submits that the plaintiff was required to prove his case while leading affirmative evidence, particularly when he had relied upon the aforesaid affidavit to claim relinquishment.

6. No doubt, the plaintiff is required to lead his affirmative evidence, at the first instance, however, at that point of time, the plaintiff was not in the knowledge of the evidence, which may be led by the defendants. Moreover, the onus to prove issue No.4 was on the defendants. Further, it may be noted here that even if the aforesaid issue

does not cover the proposed evidence, still an alternative prayer to permit the plaintiff to lead additional evidence has already been made. Though, the opinion of the private expert is not binding on the court, however, it would help the court in forming its own opinion. Once the court has two opinions, it would be in a better position to decide the case.

7. The rules of procedure are the handmaid of justice. Though, after deletion of Order XVIII Rule 17-A of the Code of Civil Procedure, 1908, there is no specific provision, however, the court has inherent powers under Section 151 of the Code of Civil Procedure, 1908 to allow such applications, in the interest of justice.

8. Keeping in view the aforesaid facts, the impugned order is set aside. Let the petitioner be granted an opportunity to examine the handwriting and fingerprint expert.

9. With these observations, the revision petition stands allowed.

10. All the pending miscellaneous applications, if any, are also disposed of.

10.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE