

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

**CR-2047-2018 (O&M)
Date of decision: 08.08.2022**

Jasbir Singh

... Petitioner

Vs.

Charanjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Chetan Slathia, Advocate
for the petitioner.

Mr. Satbir Rathore, Advocate
for respondents No.1 to 3.

Mr. Ajit Sihag, Advocate
for respondents No.4 to 6.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 16.02.2018 passed by the Civil Judge (Jr. Divn.), Dasuya, vide which application filed by the petitioner-plaintiff No.1 and other plaintiffs for comparison of signature of deceased Gurdial Singh on the disputed Will dated 13.10.1987 from handwriting expert, was dismissed.

Brief facts of the case are that petitioner-plaintiff No.1 Jasbir Singh and other plaintiffs filed a suit for declaration that plaintiffs and defendants

No.7 & 8 are joint owners in possession to the extent of 1/3rd share and mutation No.1635, sanctioned on the basis of unregistered Will dated 13.10.1987 in favour of defendants No.1 to 3 and father of defendants No.4 to 6, is illegal and not binding on rights of the plaintiffs.

In the written statement filed by defendants No.1 to 3, it is specifically stated in para No.3 that Gurdial Singh executed a legal and valid Will dated 13.10.1987 during his lifetime with his sound and disposing mind without any influence from any side and the mutation has been sanctioned on the basis of same in favour of defendants No.1 to 6 rightly and legally. Similar reply was filed by defendants No.4 to 6, however, it is stated that the Will is not in possession of defendants No.4 to 6.

Thereafter, the trial Court framed the issues and issue No.10 reads as under: -

“Whether Gurdial Singh executed Will dated 13.10.1987? OPD”

Learned senior counsel for the petitioner submits that when an application was moved by the petitioner-plaintiff for production of Will, by filing the reply, the defendants took a stand that the same is legal, however, the same was lost and thereafter, the defendants moved an application for leading secondary evidence, which was allowed. Thereafter, DW5 Harbans Singh produced the Will of his father. It is further submitted that once the Will is produced on record, by leading secondary evidence, under issue No.10, onus of which was on the defendants, the plaintiffs moved an application for comparison of signatures of Gurdial Singh on the same with the standard

signatures, at the stage, when the case was fixed for rebuttal evidence, as petitioner had reserved his right to rebut the evidence, after closing of evidence of the defendants, qua the issues, onus of which was on the defendants.

The trial Court, vide impugned order dated 16.02.2018, dismissed the application on the premise that the plaintiffs cannot be allowed to lead the evidence of handwriting expert in rebuttal, as no such evidence can be led in rebuttal, which was in their knowledge.

Learned senior counsel has argued that in fact, the findings recorded by the trial Court are erroneous on both counts; firstly, the Will was never in possession of the plaintiffs, as in the plaint, it is set up that they came to know about the same, when the mutation was sanctioned on the basis of said Will; and secondly, onus of issue No.10 was on the defendants and the application for leading secondary evidence was also filed by the defendants to prove the said Will, by acknowledging that the Will is misplaced and not traceable and therefore, the same was never in possession of the plaintiffs. It is further submitted that the petitioner is not leading rebuttal evidence with regard to the fact, which was in his knowledge and is only leading rebuttal evidence with regard to an issue, onus of which is on the defendants i.e. issue No.10.

Learned counsel for respondents No.1 to 3 has relied upon a judgment of this Court in **Ramo Bai and others Vs. Vidya Rani and others, 2011 (38) RCR (Civil) 54**, to submit that since the Will, which has been produced as secondary evidence by the defendants, is a photocopy of the same, signatures on the said Will cannot be compared, however, on facts, the said

judgment is distinguishable, as in the said case, the Will, which was not an exhibited document, was sought to be compared by examining a handwriting expert, whereas in the instant case, the Will has already been produced by the defendants by leading the evidence.

Learned counsel has further relied upon another judgment of this Court in **Gurcharan Kaur and others Vs. Gurjant Singh and others, 2017 (3) PLR 558**, to submit that where the Will was in the knowledge of the plaintiff, at the time of leading affirmative evidence, therefore, at the stage of leading the rebuttal evidence, no such application can be allowed to examine a handwriting expert. Even on facts, the said judgment is distinguishable, as the Will has been brought on record by the defendants by moving a proper application for leading secondary evidence, therefore, it cannot be said that the plaintiffs, for the first time, want to lead the evidence in rebuttal, which he could lead in affirmative, as it is admitted case of the parties that the plaintiffs were never in possession of the Will dated 13.10.1987.

In reply, learned senior counsel has relied upon a judgment of this Court in **Pappu @ Rai Singh Vs. Smt. Chander Wati and others, 2012 (13) RCR (Civil) 198**, wherein it is clearly held that where the onus of a particular issue is on the defendant, the plaintiff has a right to lead evidence in rebuttal.

After hearing learned counsel for the parties and going through the record, present revision petition is allowed and the impugned order dated 16.02.2018 passed by the Civil Judge (Jr. Divn.), Dasuya is set aside, as the petitioner was to compare signatures on disputed Will, which was produced on

record by the defendants by leading secondary evidence under issue No.10, onus of which was on defendants.

The petitioner is permitted to examine a handwriting expert to compare the signatures of Gurdial Singh on the disputed photocopy of the Will, as it is stated that the signatures on photocopy are clear and can be compared.

Considering the fact that this petition is pending since 2018 and vide order dated 28.03.2018, passing of final judgment was stayed, the trial Court will make all endeavour to decide the case expeditiously preferably within a period of six months from today.

[ARVIND SINGH SANGWAN]
JUDGE

08.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No