

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3132-2017 (O&M)
Date of decision: 10.10.2022

Deepak Mehta

....Petitioner

Vs.

Navneet Mehta and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Kumar Sharma, Advocate
for the petitioner.

Mr. Harsh Manocha, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the order dated 24.04.2017 passed by the trial Court, vide which application filed by the plaintiff to get the signatures on disputed Will dated 04.05.1992 examined by a Fingerprint and Handwriting Expert, in rebuttal evidence, was allowed.

Brief facts of the case are that respondent No.1-plaintiff filed a civil suit on 29.09.2005 praying for a decree of declaration that the suit properties are joint Hindu coparcenery and ancestral properties of the

parties and the sale deed executed by defendant No.6 in favour of defendants No.11 & 12 is illegal, null and void and not binding on right of the plaintiff and consequential relief of joint possession of the suit properties was also prayed for. After the plaintiff and defendants concluded their respective evidence in affirmative, when the case was fixed for rebuttal evidence of the plaintiff, the aforesaid application was filed by the plaintiff for examination of Fingerprint and Handwriting Expert to examine the signatures of testator Vidya Nath Mehta with his standard and admitted signatures. In the application, it is specifically pleaded that the signatures appended to the Will dated 04.05.1992 are in fact appended by one Didar Singh and not by Vidya Nath Mehta. Defendant No.6 contested the application on the ground that since in para No.7 of the plaint, the plaintiff himself set up the case that Will dated 04.05.1992 is forged, therefore, it was for the plaintiff to lead the evidence in affirmative.

The trial Court, vide impugned order dated 24.04.2017, allowed the application. The operative part of the order reads as under: -

“I have heard the ld. Counsel for the parties and have gone through the record of the file. It is true that the present case was filed by the plaintiff on 29.09.2005 and after framing of issues, the case of the plaintiff was fixed for evidence for the first time on 09.10.2007, but thereafter, the case was fixed for arguments on the stay application, but then the application for amendment of issues was framed, which does not reached to its

final decision as the pleadings were not complete and on completion of pleadings issues were re-framed on 02.06.2012 and the case was posted for the evidence of the plaintiff, which was conclude don 04.07.2013 and then the case was fixed for defendant evidence, which has been closed on 22.12.2016. Now, the present application has been moved by the plaintiff for permission to get the signatures of Vidya Nath Mehta compared with his standard signatures by the Hand-Writing Expert on the alleged Will. It has been contested by defendant No. 6, on the ground that plaintiff cannot lead such evidence at this stage of the case because he has already taken his turn for evidence and onus to prove issue No. 5 was placed on the plaintiff, which is regarding the Will dated 04.05.1992 and it was for the plaintiff to prove whether this Will is illegal, null and void, forged and fabricated. So, this evidence was required to be led by the plaintiff in his affirmative evidence, but this Court does not find its grip with this contention of ld. Counsel for defendant No. 6 because the evidence to prove the Will was upon the defendant as the will was propounded by the defendant in his favour. As defendant has started his evidence after the plaintiff concluded the same, so, the plaintiff has not got the opportunity to rebut the evidence, which was likely to be brought by the defendant in order to prove the alleged Will.

Had the defendant not brought any evidence, regarding the alleged Will, there was nothing for the plaintiff to rebutt. So, he was not required to lead any evidence to rebut the Will before the evidence of the defendant on the said Will. Moreover, after the conclusion of the evidence of the defendant, plaintiff has the right to answer on entire evidence led by the defendant. This is not a case of filling of lacuna in the case, rather it is a duty of the Court to give fair opportunity to both the parties to lead their evidence on their case. The plaintiff can lead any such evidence only after the defendant bring his evidence to prove the Will. So, the plaintiff is permitted to examine the Hand Writing and Finger Print Expert after comparing the signatures of Vidya Nath Mehta with standard signatures. The Hand Writing Expert can also take the photographs of alleged signatures of Vidyantath Mehta on the alleged Will dated 04.05.1992 for this purpose. The application is allowed accordingly.”

Learned senior counsel for the petitioner has assailed the findings of the trial Court on the ground that a perusal of the civil suit filed by respondent No.1-plaintiff reveals that in para No.7, it is specifically stated that defendant No.6 has procured and forged the Will dated 04.05.1992, allegedly executed by Vidya Nath Mehta, however, the same was never executed by him and it is an unregistered document, which was

got registered in an illegal manner. It is further submitted that once the plaintiff himself claims in the suit that the Will is a forged and fabricated document and not signed by testator Vidya Nath Mehta, it was for the plaintiff to lead evidence in affirmative on this point, as even onus of issue with regard to validity of the Will i.e. *‘Whether the Will dated 04.05.1992 in favour of defendant No.6 is illegal, null and void, forged and fabricated?’*, was on the plaintiff. It is thus argued that once the plaintiff closed the evidence, there was no occasion for him to examine the Fingerprint and Handwriting Expert to prove that Will in dispute is not signed by testator Vidya Nath Mehta.

Learned senior counsel has further argued that in corresponding para No.7 of the written statement, petitioner-defendant No.6 specifically pleaded that Will dated 04.05.1992 was executed by Vidya Nath Mehta in favour of defendant No.6 Deepak Mehta and the same is a genuine and registered document. It is also stated that the Will in dispute was executed by Vidya Nath Mehta of his own free will, without any pressure or undue influence and in a state of sound disposing mind. It is further stated that the plaintiff never objected to the Will in dispute, as he had knowledge about execution of the same. Learned senior counsel has referred to a judgment of this Court in **Radha Devi Vs. Ram Gopal (since deceased) through his LRs and others, 2019 (2) CivCC 297**, wherein it is held that with regard to comparison of the signatures at rebuttal stage, it was for the plaintiff to lead substantive evidence at the affirmative stage and he cannot

be allowed to lead rebuttal evidence with respect to an issue, onus of which was on the plaintiff. The facts of this case shows that no specific issue was framed in the said case with regard to execution of the Will, therefore, the trial Court dismissed the application and the order was upheld by this Court.

Learned senior counsel has referred to another judgment in **Gurcharan Kaur and others Vs. Gurjant Singh and others, 2017 (3) PLR 558**, wherein this Court held that a Handwriting Expert cannot be allowed to be examined in rebuttal and cannot be allowed by way of an additional evidence, if a fact was within the knowledge of the plaintiffs, when they were leading the evidence in affirmative. In this case, again there was no specific issue with regard to validity of the Will.

Learned counsel for respondent No.1-plaintiff has argued that evidence of the plaintiff in affirmative was concluded on 04.07.2013 and till that time, the defendants never produced the original Will on record. It is further submitted that the Will was produced by the defendants only when evidence of the defendants in affirmative started, which was closed in December, 2016, therefore, when the case was fixed for rebuttal evidence of the plaintiff, application was moved to get the signatures of testator of the original Will compared by a Handwriting Expert. It is also submitted that till the time, original Will was not on record, mere fact that the plaintiff was leading his affirmative evidence, in the absence of original Will being produced on record, he had no occasion to get the signatures compared from a Handwriting Expert. It is next argued that it is well settled principle of law

that onus to prove the Will is on its propounder and merely because the onus of one of the issue was on the plaintiff to prove that the Will is an outcome of the fraud, will not change the well settled principle of law. It is the defendant, who set up the Will, has to prove the fact that it was executed by the testator being in a state of free and sound disposing mind and without any coercion.

On a Court query, learned senior counsel for the petitioner-defendant No.6 could not dispute that till the time, the plaintiff was leading the evidence in affirmative, original Will was never produced on record by the defendants and it was produced for the first time on record of the trial Court, only at the time when the defendants were leading the evidence.

After hearing learned counsel for the parties, I find no merit in the present petition, for the following reasons: -

- (a) There is no dispute with regard to ratio of judgments laid down in **Radha Kumari's** case (supra) and **Gurcharan Kaur's** case (supra), however, facts of the said cases are distinguishable and not applicable to facts of this case, as in the present case, the Will was produced on record of the trial Court for the first time during evidence of the defendants.
- (b) Since the Will has been set up by the defendants in para No.7 of the written statement, mere fact that the plaintiff has stated so in para No.7 of the plaint that the Will is an outcome of the fraud, it cannot be presumed that he had an opportunity to lead

the evidence with regard to the fact, whether the same is signed by the testator or not, as the Will was never produced on record of the trial Court.

- (c) Even otherwise, it is well settled principle of law that only after the defendants led the evidence by producing the Will for the first time, the plaintiff has a right to rebut the same, while leading the rebuttal evidence, therefore, the trial Court has rightly allowed the application for examination of Handwriting Expert to examine the signatures on the Will with the standard signatures.
- (d) A perusal of the impugned order shows that the issues were re-framed on 02.06.2012 and thereafter, the case was posted for evidence of the plaintiff, which was concluded on 04.07.2013. The trial Court has rightly recorded a finding that though onus of issue No.5 to prove that Will is illegal, null and void, forged and fabricated, was on the plaintiff, however, the Will was never produced on record by the defendants, therefore, the plaintiff had no opportunity to rebut the evidence of the defendants.

Accordingly, finding no merit in the present revision petition, same is dismissed.

Considering the fact that this petition is pending since 2017 and for a period of five years, there was stay of operation of impugned order

and also in view of the fact that civil suit pertains to the year 2005, the trial Court is directed to decide the same expeditiously preferably within a period of 06 months from today.

**[ARVIND SINGH SANGWAN]
JUDGE**

10.10.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No