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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5411-2015

Decided on: 06.09.2022

Sita Devi (since deceased) through LRs.Petitioners
vs.
Kulwant Rai (since deceased) through LRs. and anr.Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vishal Munjal, Advocate for the petitioners.
Mr. Sourabh Goel, Advocate for the respondents.

HARKESH MANUJA J. (Oral)

By way of present revision petition, the petitioners have challenged the order dated 17.03.2015 (Annexure P-4) passed by learned Civil Judge (Junior Division), Ludhiana, whereby an application filed at their instance for allowing them to produce handwriting expert has been declined.

2. The petitioners/plaintiffs filed a suit for separate possession by way of partition along with permanent injunction, claiming themselves to be the co-owners in the suit property being one of the legal heirs of deceased- Ami Chand. In response to the notice, respondent No.1-deceased Kulwant Rai had setup a registered Will dated 08.06.1982 in his favour claiming himself to be the sole owner of the property in question left by Ami Chand. Besides other issues, a specific issue No.iii regarding the execution and validity of Will was framed by the learned trial court on 21.08.2008 and burden to prove the same was put on respondent No.1/defendant No.1- Kulwant Rai. Relevant issue No.iii is reproduced hereunder for reference:-

“iii. Whether Sh. Ami Chand deceased executed a legal and valid Will dated 08.06.1982 in favour of defendant No.1? OPD (1)”

3. The petitioners-plaintiffs concluded their evidence and, thereafter, the matter was fixed for recording of the evidence of respondents-defendants. Kulwant Rai-defendant No.1 appeared in the witness box as DW-1, while he was being cross-examined on 05.09.2014, certain letters were put to him by the counsel representing the petitioners/plaintiffs. The letters were allegedly written by deceased-Kulwant Rai addressed to petitioner No.1/ plaintiff No.1 as well as her husband Surjit Rai mentioning therein about the deteriorating health condition of Ami Chand. As per the petitioners/plaintiffs, when these letters were put to respondent No.1-defendant No.1 (Kulwant Rai) during his cross-examination, he denied his signatures over these letters, which necessitated them for filing of an application for seeking permission of the trial court for taking photographs of his admitted signatures for comparing those with the letters put to him during his cross-examination.

4. In pursuance to the aforesaid application, respondent No.1-defendant No.1 (Kulwant Rai) filed his reply and opposed the prayer. Learned trial court vide impugned order dated 17.03.2015 dismissed the application filed on behalf of the petitioners/plaintiffs by stating that as these letters were never pleaded by the petitioners, thus could not be permitted to lead such evidence being beyond pleadings.

5. Learned counsel for the petitioners submits that the letters written by respondent No.1-Kulwant Rai regarding the health condition of deceased-Ami Chand were very much relevant to

discharge the onus shifted upon them for the purpose of raising suspicious circumstances attached to the Will in question and therefore, this was the first opportunity to prove these letters when the same were put to respondent No.1-Kulwant Rai, while he appeared in the witness box as DW 1 for proving the will.

6. On the other hand, learned counsel for the respondents submits that these letters were neither pleaded in the suit; nor any issue was pressed by the petitioners regarding these letters and, therefore, the same being beyond pleadings could not be permitted to be produced at this stage.

7. I have considered the arguments made by learned counsel for the parties; gone through the records of the Courts below and find substance in the submissions made on behalf of the petitioner which are well-founded and worth consideration.

8. A perusal of issue No.(iii) shows that the burden to prove the execution of the Will was placed upon the beneficiary i.e. respondent No.1/defendant No.1 and, therefore, the onus would only shift upon the petitioners/plaintiffs to dispel the valid execution of Will by raising suspicious circumstances, once respondent No.1/defendant No.1 appeared as a witness to prove the valid execution of Will. Therefore, by putting the letters in question to respondent No.1 (DW-1) during his cross-examination and there being a denial of signatures on his part, the petitioners were well within their right to move an application before the learned trial Court seeking permission/allowing them to take photograph of the admitted signatures of respondent No.1, so as to compare the same

with his signatures on the letters in question by examining handwriting expert and their prayer could not have been declined on the ground that these letters were not pleaded by them in their plaint.

9. In the facts of the present case, the learned trial court perhaps missed out the provision of Order 6 Rule 2(1) of Code of Civil Procedure, 1908, which reads as under :-

“2. Pleading to state material facts and not evidence:

(1) Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.”

The Learned Trial Court went wrong while recording that in the absence of pleadings regarding these letters, the petitioners could not have been permitted to produce any handwriting expert so as to compare the signature of Kulwant Singh on these letters. Learned Trial Court has failed to appreciate that these letters are merely a piece of evidence and each & every evidence is not required to be pleaded. In fact, it would be too much to assume that each and every piece of evidence is required to be incorporated in the pleadings. In this regard reference is made to judgement of Hon’ble Supreme Court in case titled as **“Popat and Kotecha Property Vs State Bank of India Staff Association”** reported as 2005 (4) RCR 334 and para 18 being relevant, is reproduced herein below :-

“18. Order 6 Rule 2(1) of the Code states the basic

and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved”.

Further, no issue was required to be pressed upon by the petitioners regarding the validity of these letters because by way of these letters, the petitioners were only trying to built their case of raising/drawing suspicion about the valid execution of the Will dated 08.06.1982 allegedly executed by Ami Chand in favour of respondent No.1. The petitioners could not have been expected to disclose every piece of evidence in their pleadings so as to make their opponents wiser in advance.

10. In the facts and circumstances of the present case, I do not find any merit in the contention raised by learned counsel representing respondent No.1 to the effect that the letters were sought to be produced by way of rebuttal evidence, which as per him, could not be permitted. Once, the primary burden to prove the valid execution of Will was on the beneficiary i.e. respondent No.1, the onus to dispel the same by raising suspicious circumstances could shift upon petitioners only in rebuttal to the evidence led by respondent No.1-defendant No.1.

11. In view of the reasoning recorded hereinabove, the revision petition is allowed. The impugned order dated 17.03.2015 (Annexure P-4) passed by learned trial court is hereby set aside.

Accordingly, the petitioners are permitted to carry out inspection of the file through handwriting expert, so as to take photographs of admitted signatures of respondent No.1-Kulwant Rai for comparison of the same with the letters in question to be proved through an expert.

12. There shall be no order as to costs.
13. Needless to say, anything observed hereinabove is only for the purpose of deciding the present petition and the same would not affect the merits of case pending before learned trial court.

06.09.2022
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No