

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

CR No.8013 of 2017

Date of decision : 12.05.2022

Rati Ram

....Petitioner

Versus

Sheesh Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Nipun Vashist, Advocate
for the petitioner.

Mr. Kul Bhushan Sharma, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

This revision petition is directed against the order dated 21st of October, 2017 whereby the application filed by the petitioner to examine the handwriting expert by way of additional evidence, has been declined.

2. Plaintiff is in revision. Parties herein after will be referred as per their original position before the Ld. Trial Court in order to avoid confusion.

3. While issuing notice of motion on 16th of November, 2017, this Court passed the following order :-

“[1] Learned counsel contends that the application moved by the plaintiff-petitioner for getting the Will produced by the defendant in his evidence, examined from a handwriting expert was rejected by the learned trial Court vide impugned order dated 21.10.2017 on the ground that numerous dates

had been availed by the plaintiff-petitioner for leading evidence besides execution of the Will was already to the knowledge of the plaintiff-petitioner.

[2] Learned counsel contends that the plaintiff-petitioner had led evidence in order to discharge the onus which was cast upon him and it was only on production of the Will which was in the custody of the defendants that the application was moved for permission to get the same examined from a handwriting expert. Learned counsel contends that the reasoning given by the learned trial Court for rejecting the application was unsustainable since the plaintiff-petitioner had no access to the Will in question prior thereto.

[3] Notice of motion for 07.12.2017.

[4] Dasti also.

[5] Liberty to effect service on the respondents through the counsel representing them before the learned trial Court as also to make a prayer before the learned trial Court to defer the proceedings of the case listed before it for 29.11.2017 to a date beyond the date fixed before this Court.”

4. Counsel for the plaintiff would contend that since the defendant No.1 is the propounder of the Will and, thus, the onus w.r.t. the 'Will', will always lay on the defendant to prove the same in affirmative. By way of the application under revision, the plaintiff is seeking examination of handwriting and fingerprint expert to place on record evidence to dispute the execution of the Will.

5. Per contra, Mr. Kul Bhushan Sharma, Advocate submits that since the fact w.r.t. the Will was already in the knowledge of the plaintiff, thus, the plaintiff ought to have been diligent while leading evidence in

affirmative and thus at this stage once he has already closed his evidence in affirmative, he cannot be allowed to fill-up the lacuna by resorting to additional evidence. In support of his contention, Ld. Counsel for defendant No.1 relies upon the law laid down by this Court in 'Mohinder Singh vs. Balbir Singh and others', 2011(13) R.C.R. (Civil) 238 and 'Ram Kumar vs. Raj Kumar and others', 2013(54) R.C.R. (Civil) 308, wherein it has been held that once evidence was well within the knowledge of plaintiff and he failed to lead the same in affirmative, the said evidence cannot be allowed to be led by way of additional evidence.

6. I have heard, Ld. Counsel for the parties and have carefully gone through the record of the case. Onus to prove 'WILL' is on propounder thereof. It is admitted fact that the Will has been propounded by defendant No.1. It is also admitted fact that the Will in original was not placed on record along with the written statement as required under Order 8 Rule 1-A CPC. Thus, once defendant himself has not produced the original document along with the written statement, it does not lie in the mouth of the defendant to say that the plaintiff ought to have led evidence in affirmative. It goes without saying that the plaintiff could have led the evidence w.r.t. the Will only after defendant has produced the same and has led evidence to prove the same.

7. In **Mohinder Singh's case** (supra) it was a suit for specific performance wherein the plaintiff was the propounder of the agreement to sell. Execution thereof was denied by defendant in the written statement.

Plaintiff failed to lead evidence in the form of examination of handwriting expert to discharge his onus. After defendant's evidence, application filed by the plaintiff seeking permission to examine handwriting/fingerprint expert in rebuttal, was allowed by the Trial Court. It was in these circumstances, this Court held that since onus to prove execution of agreement was on the plaintiff which he failed to discharge while leading evidence in affirmative, he cannot be allowed to fill the said lacuna. Similarly, in **Ram Kumar's case** (supra), the plaintiff himself was propounder of the agreement which he wanted to prove by examining the handwriting expert in rebuttal. Ratio of both the cases do not aid the cause of defendant/respondent No.1 and, are thus, not applicable in the present case.

8. As a sequel of the discussion herein above, without commenting upon the merits of the case, the impugned order (Annexure P-5) is hereby set aside. The application under revision filed by the plaintiff placed at Annexure P-3, is allowed. Ld. Trial Court shall allow the plaintiff to lead evidence in form of handwriting and fingerprint expert *vis-a-vis* Will.

9. Needless to say that the plaintiff shall be granted only 'two' opportunities to examine handwriting expert by way of additional evidence.

May 12, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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