

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

RSA No.4602 of 2017 (O&M)
Date of decision: 22nd November, 2022

Jasbir Singh & others

... Appellants

Versus

Gursharan Kaur & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakesh Gupta, Advocate for the appellants.

Mr. S.S. Salar, Advocate
for the caveators/respondents No.1 to 5.

MANJARI NEHRU KAUL, J.

Suit for joint possession, declaration and permanent injunction filed by the respondents was decreed with costs by the trial Court vide judgment and decree dated 19.11.2014 and which findings of the trial Court were affirmed in appeal by the lower appellate Court vide judgment and decree dated 17.05.2017. Aggrieved against the same, the defendants are now in appeal before this Court.

Learned counsel for the appellants submits that both the Courts below gravely erred in discarding the Will dated 02.08.2004 executed by Gurtar Singh, without appreciating the evidence on record in the right perspective.

He submits that to controvert the report of the expert PW-2 and to prove the genuineness and due execution of the aforesaid Will

dated 02.08.2004, the appellants had tendered report of an handwriting expert, however, the said witness was not cross-examined by the respondents and on their request, the case was adjourned by the trial Court. The said handwriting expert was then bound down by the Court, however, since the said expert was busy before another Court on the said date, he was unable to appear before the trial Court when the case was called for his cross-examination. Resultantly, the trial Court closed the evidence of the appellants by order.

Learned counsel has vehemently urged that it is settled law that if a witness, who has been bound down, fails to appear before the Court, it would then be for the Court to ensure his presence by issuance of warrants, which however was erroneously not done in the instant case. Learned counsel asserted that in the aforementioned facts and circumstances of the case, the trial Court was not at all justified in closing the evidence of the appellants by order. Learned counsel further argued that even the lower appellate Court failed to appreciate the said fact and dismissed the appeal preferred by the appellants.

Learned counsel for the appellants has lastly contended that since the appellants were not given due opportunity to prove their case by both the Courts below, it had caused a grave prejudice to them. Therefore, the matter deserved to be remanded back for decision afresh. In support, learned counsel has placed reliance upon **‘Bhagwan Das and another vs. Firm Banwari Lal-Ram Niwas’ 1979(2) RentLR 276.**

Learned counsel for the respondents has not been able to controvert the submissions made by the counsel opposite with respect to the expert witness though having been bound down by the trial Court for his cross-examination, was unable to appear, and to secure his presence no warrants were issued nor any efforts made by the trial Court in the said regard. Learned counsel does not oppose the prayer made by the counsel opposite for remanding the matter back to the Court below.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court finds force in the submissions made by the learned counsel for the appellants that since the expert witness was bound down by the trial Court, it was imperative upon the trial Court to make efforts for securing his presence and the trial Court therefore, erred in straightaway going ahead and closing the evidence of the appellants by order.

A perusal of the record reveals that the expert witness examined by the appellants was bound down by the trial Court for his cross-examination, however, on the next date of hearing due to his absence, the evidence of the appellants was closed by order, by the trial Court.

It would be relevant to observe that once a witness has been bound down, the Courts must make efforts to secure his presence and

should refrain from resorting to closure of evidence of the party concerned, more so, when no fault can be attributed on its part.

In view of the aforesaid, this Court is of the opinion that the appellants were not given due opportunity to prove their case. The matter in issue in the suit pertains to the execution of a Will, therefore, the evidence of the expert witness to prove his report, which stands tendered by the appellants, would without a doubt, have a bearing on the merits of the case. Hence, in the facts and circumstances as enumerated hereinabove coupled with the fact that learned counsel for the respondents has not opposed the prayer of the learned counsel for the appellants, the judgments and decrees passed by the Courts below are set aside and the matter is remanded back to the trial Court for its decision afresh. The trial Court shall allow the expert witness (handwriting expert) summoned by the appellants to be cross-examined by the respondents/plaintiffs and thereafter proceed to decide the suit in accordance with law after considering all the relevant material on record. The parties are directed to appear before the trial Court on 10.01.2023 and the trial Court shall make earnest efforts to decide the suit expeditiously, in accordance with law.

The instant appeal stands disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

November 22, 2022

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No