

CR-2148-2018 (O&M)

201

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2148-2018 (O&M)

Date of decision: May 10, 2023

Neelam Khanna

....Petitioner

versus

Rakesh Khanna and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Amit Kumar Goyal, Advocate for petitioner.

Mr. Rampal Verma, Advocate for respondent No.1

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for quashing impugned order dated 16.02.2018 (Annexure P-5) passed by learned Civil Judge (Junior Division), Sonipat, whereby application filed by petitioner/defendant No.2 for getting the alleged thumb impression on the unregistered Will compared with admitted signatures of the deceased testator, was dismissed.

2. Averments are that plaintiff-respondent No.1 filed suit for declaration with consequential relief of permanent injunction praying that plaintiff be declared as owner in possession of suit properties in question and mutations regarding suit properties be declared null and void. During pendency of suit proceedings, plaintiff examined his finger print expert, who gave opinion in favour of plaintiff. Thereafter, petitioner/defendant No.2 also moved an application for appointment of fingerprint expert from FSL Madhuban, Karnal for comparing the admitted signatures of deceased Shiv Kumar Khanna on the alleged unregistered Will with some admitted signatures of the deceased. However, the application was dismissed.

3. Learned counsel for petitioner contends that trial Court wrongly dismissed the application seeking appointment of fingerprint expert from FSL

CR-2148-2018 (O&M)

Madhuban, when it is settled proposition of law that figure print/ handwriting expert give report in favour of party calling them. Application was required to be allowed to adjudicate the allegation that the alleged Will dated 12.05.2010 executed by deceased Shiv Kumar Khanna is fabricated.

4. On the other hand, learned counsel for respondents supports dismissal of application of petitioner for appointment of fingerprint expert. He argues that interim order is based on correct reasoning.

5. I have heard learned counsel for the parties and perused the case file.

6. It transpires that given the nature of suit, wherein dispute is with regard to veracity of the Will in question, no prejudice would be caused to respondent No.1-plaintiff in case fingerprint expert from FSL Madhuban, Karnal gives an expert opinion after comparison of admitted/ proved signatures of deceased Shiv Kumar Khanna with his disputed signatures on the unregistered Will in question.

7. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases ought not to be taken away by learned Courts except in a case of their deliberate omission/ failure to do so. Prejudice would indeed be caused to petitioner herein, unless fingerprint expert from FSL Madhuban, Karnal (a neutral agency) is appointed as prayed, particularly when plaintiff has examined his fingerprint expert, who gave opinion in favour of plaintiff. Ultimately, it is the Court which will evaluate the evidence led by parties and decide whose version about the genuineness of signatures on disputed Will is to be accepted. I am of the view that report from the Government laboratory would be rather of assistance to learned Court below for effective adjudication of the *lis*.

8. Accordingly, revision petition is allowed. It is made clear that responsibility of bringing on record the proved or admitted signatures of the

CR-2148-2018 (O&M)

deceased shall solely be that of petitioner-defendant herein. The entire costs for the exercise to be carried out shall be borne by petitioner. Furthermore, expert to be appointed shall be from the Government laboratory i.e., FSL, Madhuban (Karnal). It is made clear that not more than two effective opportunities will be granted to petitioner to carry out the exercise.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 10, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No