

234 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 3237 of 2017(O&M)
Date of Decision: 04.08.2023

Sushma Sharma

...Petitioner

Versus

Rajinder Kumar Sharma & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. G.S. Sirphikhi, Advocate
For the petitioner.

Mr. M.S. Rana, Advocate for
Mr. Satish Jaswal, Advocate
For respondent No.2.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ plaintiff for setting aside order dated 17.03.2017 (Annexure P-3), whereby the rebuttal evidence of the petitioner/ plaintiff has been closed by order and order dated 05.04.2017 (Anneuxre P-7) whereby the application filed by the petitioner under Section 151 CPC to lead rebuttal evidence has been dismissed by the Court of Civil Judge(Jr.Divn.), Batala.

2. The counsel for the petitioner, *inter alia*, submits that the learned trial Court framed issue No.5-A as follows;-

“5-A Whether the deceased Harbans Lal executed a will dated 13.03.1992 in favour of defendants No.1 and 2 ? OPD No.2”

3. The counsel for the petitioner further submits that in order to prove the aforesaid issue, defendant No.2 has led evidence and now the petitioner intends to lead evidence in rebuttal to the evidence led by

defendant No.2 with regard to issue No.5-A. That the petitioner is having legal right to do so. It is further submitted that it will cause grave injustice to the petitioner if he is not allowed to lead evidence in rebuttal. So, prayer is made that the impugned orders be set aside.

4. The present petition is resisted by the counsel for respondent No.2 who submits that petitioner availed three opportunities to adduce evidence in rebuttal and finally the learned trial Court passed order dated 17.03.2017 whereby the rebuttal evidence of the petitioner was closed. That thereafter petitioner made another request for permission to lead evidence in rebuttal but the same was also declined vide order dated 05.04.2017. The counsel for respondent No.2 while supporting both the aforesaid orders submits that there is no illegality in the impugned orders and the present petition deserves to be dismissed.

5. I have considered the submissions made by counsel for the parties.

6. It appears that respondent No.2 has propounded one will dated 13.03.1992 stated to be executed by Harbans Lal deceased in favour of defendants No.1 and 2. Proper issue No.5-A has been framed by the learned trial Court with regard to said will and the onus to prove the same is on defendant No.2. In the present case in order to discharge his onus, defendant No.2 has already lead evidence regarding issue No.5-A. So, the petitioner has got statutory right to lead evidence in rebuttal to issue No.5-A.

7. The Hon'ble Apex Court in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, (2005) 6 SCC 344** has held that in spite deletion of provision of Order 18 Rule 17-A CPC, the right to produce

evidence at later stage by way of additional evidence is not taken away and the Court has inherent power to exercise jurisdiction for advancement of justice in terms of provisions under Section 151 CPC.

8. It appears that the petitioner was somewhat negligent as he availed three opportunities to produce rebuttal evidence and only thereafter impugned order (Annexure P-3) was passed by the learned trial Court. However, this Court is of the view that proper opportunity is to be given to the petitioner to lead evidence in rebuttal in order to render substantial and complete justice. But to balance the equities, the same will be subject to payment of costs.

9. For the foregoing reasons the revision petition is allowed and impugned orders dated 17.03.2017 (Annexure P-3) and 05.04.2017 (Annexure P-7) are set aside with direction to the learned trial Court to provide two effective opportunities to the petitioner to lead evidence in rebuttal to issue No.5-A subject to costs of Rs.10,000/- which is to be paid by the petitioner to opposite party on the next date fixed before the trial Court

04.08.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No