

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

**CR-1078-2019 (O&M)**  
**Reserved on 18.10.2022**  
**Pronounced on 01.02.2023**

Sharanjit Kaur .....Petitioner  
vs.  
Smt. Parveen Mahal and others .....Respondents.

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Mr. Amit Jain, Sr. Advocate with  
Mr. Karanbir Singh, Advocate,  
for the petitioner.

Mr. Akshay Bhan, Sr. Advocate with  
Mr. Sushant Kareer, Advocate and  
Mr. Japjit Singh Johal, Advocate,  
for the respondents.

\*\*\*\*\*

**HARKESH MANUJA J.**

The present revision petition has been directed against the order dated 05.12.2018 passed by the court of Civil Judge (Junior Division), Ludhiana, whereby an application filed at the instance of petitioner-plaintiff, seeking permission to take photographs of Will in question dated 26.03.1985 for the purposes of examining handwriting expert, has been dismissed.

Facts leading to the present case are that the petitioner-plaintiff filed a suit for declaration, claiming 2/3<sup>rd</sup> share out of the total suit land owned by deceased Amarjit Singh. The petitioner-plaintiff also questioned the validity of Will dated 26.03.1985, purportedly executed by deceased-Amarjit Singh in favour of respondents No.1 to 5, stating it to be a forged and fabricated document. On the other hand, the respondents-defendants based their claim upon Will dated 26.03.1985, regarding the estate of deceased-Amarjit Singh.

Issues framed in the suit on 20.09.2012 are reproduced hereunder for reference:-

*“1. Whether land in dispute in the hands of Amarjit Singh was Joint Hindu Family ancestral property? If so its effect? OPP.*

*2. Whether the alienation made by defendant Nos.1 to 5 during pendency of Regular Civil Appeal between the parties in the Hon'ble Punjab and Haryana High Court are illegal, null and void? OPP.*

*3. Whether plaintiff is entitled to declaration as prayed for? OPP.*

*4. Whether plaintiff is entitled to relief of permanent injunction, as prayed for? OPP.*

*5. Whether plaintiff is entitled to joint possession of land as prayed for? OPP.*

*6. Whether late Amarjit Singh executed legal and valid Will dated 26.03.1985 in favour of defendant Nos.1 to 5 OPD.*

*7. Whether plaintiff has not come to the court with clean hands? OPD*

*8. Whether suit is bad for non-joinder of necessary parties? OPD.*

*9. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD*

*10. Whether plaintiff has no locus standi to file the present suit?OPD*

*11. Relief.”*

The petitioner-plaintiff closed her evidence on 24.08.2015, whereas, the respondents-defendants closed their evidence on 11.05.2018. Thereafter, the matter was fixed for recording of rebuttal evidence as well as for final arguments. During said period, the petitioner-plaintiff moved an application seeking permission to allow a handwriting expert so as to

inspect the file and take photograph of the alleged Will dated 26.03.1985 and to submit a report thereupon as regards the genuineness thereof. Reply to the aforesaid application was filed by the respondents on 05.09.2018. Vide order dated 05.12.2018, the prayer made by the petitioner-plaintiff came to be declined. It is the said order which has been impugned in the present revision petition.

It has been contended on behalf of learned Senior counsel appearing on behalf of the petitioner that as per issue No.6, the onus to prove execution of the Will dated 26.03.1985 was upon the defendant/respondent and as such, the requirement to rebut the same arose only once, the respondents concluded their entire evidence in affirmative as regards its proof and the original Will was produced on record on 15.01.2016 by DW-1, namely, Parveen Mahal. Learned counsel further submits that the trial Court committed an error of law while having ignored explanation 'I' to Sub Rule 2 to Rule 18 which came to be inserted by way of Punjab High Court Amendment, carried out on 01.11.1976 and reads as under:-

*“In Order XVIII, in rule 2, at the end, insert the following Explanation, namely:-*

*“Explanation- Nothing in this rule shall affect the jurisdiction of the Court for reasons to be recorded in writing to direct any party to examine any witness at any stage.”*

Referring to explanation 'I', learned Senior counsel submits that the Court was granted power to permit any party to examine any witness at any stage either of its own accord or an application made by the party, however, subject to reasons to be recorded in writing.

Learned counsel also submits that considering the relevance of the evidence sought to be adduced, the procedural law was required to be construed liberally. He again emphasis that once the burden to prove the execution of Will was upon the respondent-defendants, which even included the proof of signatures of testator, the petitioner-plaintiff could not have been denied her right to rebut the same.

Learned counsel for the petitioner further points out that the law laid down by Division Bench of this Court in case of “Jaswant Kaur and another vs. Devinder Singh and others, 1983 AIR (P& H) 210 even holds that the overly strict view is not to be taken while considering modalities of reserving the right to rebuttal by a party. He also submits that the law laid down by Division Bench of this Court in “Avtar Singh and another vs. Baldev Singh and others”, 2015(5) RCR (Civil) 625 is not to be made applicable to this case as the explanation attached to Order 18 Rule 2 CPC, was never considered or dealt with therein. For the same, learned counsel for the petitioner relies upon case titled as “Gad Singh and others vs. Phool Chand and another”, 1988 (1) ICC 446, which relates to a similar amendment inserted by way of Sub Rule 4 to Rule 2 to Order 18 carried out by the High Court of Rajasthan. In the said case also, relying upon Sub Rule (4) to Rule 2 of Order 18, it was held that the plaintiff even without reserving his right to lead evidence in rebuttal can apply to examine witness after the defendant closed his evidence. Relevant paras 6 and 7 of said judgment is reproduced here under for reference:-

“6. After the amendment made in the Code of Civil Procedure, in the year 1976 Sub-rule (4) in Rule 2 Order 18 was incorporated which provides thus:

*"(4) Notwithstanding anything contained in this rule, the court may for reasons to be recorded direct or permit any party to examine any witness at any stage."*

*In Rule 2 of Order is before the addition of Sub-rule (4) by the amendment Act of 1976, the party having right to begin has to produce his evidence first and thereafter the opposite party was required to produce his evidence. Expression "at any stage" means any stage previous to delivery of judgment and therefore after recording its reason the court is legally competent and within its jurisdiction to allow any witness to be examined till passing of the judgment in the matter.*

*7. I am of the view that the plaintiff even without reserving his right to lead evidence in rebuttal, can apply to examine witnesses after the defendant has closed his evidence in view of Order 18 Sub-rule (4). Therefore I subscribe the view expressed by the Punjab and Haryana High Court. As the learned court below has passed the reasoned order in the interest of Justice. I see no error of jurisdiction in it and if the order is allowed to stand it would not occasion failure of justice."*

On the other hand, learned counsel for respondents-defendants submits that once the right to rebuttal has not been reserved by the petitioner-plaintiff even by implied conduct, she cannot be permitted to lead any evidence at this stage, as the same would make the mandatory procedure laid down under Order 18 Rule 2 and 3 to be redundant and of no use. He further submits that once the Will in question was produced on record on 15.01.2016, there was inordinate delay on the part of the

petitioner-plaintiff while moving the application in question. He also points out that even the application filed at the instance of petitioner-plaintiff was never made by invoking Order 18 Rule 3 CPC as the same was never even mentioned thereupon.

In support of his submission, learned Senior counsel, Sh.Akshay Bhan appearing for the respondents placed reliance upon the case titled as “Avtar Singh and another vs. Baldev Singh and others”, 2015(5) RCR (Civil) 625 specifically pressing upon paragraph 6 thereof so as to contend that unless the petitioner-plaintiff had reserved any right of rebuttal, she could not be permitted to rebut the evidence led by the respondent-defendants qua the issues, the onus of which was upon the respondents-defendants. The relevant portion of para 6 is reproduced hereunder for reference:-

*Question No.2 i.e. whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendant?*

*From a plain reading of the provisions of Order 18 Rule 3 CPC and the principle of law enunciated by the Division Bench in Surjit Singh's case (supra), it is axiomatic that in a case, where there are several issues, and the burden of proof some of which lies upon the defendant, plaintiff who is conscious to the lis and alive to the matter in issue, he can adduce his evidence in entirety vis-a-vir all the issues including those onus of proof of which is upon the defendant. Or having led the evidence in affirmative, as regards the issues, the onus of proof of which is upon the plaintiff himself, he can reserve his right to lead evidence in rebuttal. Needful to assert, leading evidence in rebuttal is also a part of the plaintiff's evidence. Whether he leads it in*

*one go qua all the issues and close his evidence or reserve his right to lead rebuttal evidence.”*

Learned counsel for respondents also submits that once a specific plea of fraud and forgery of Will in question was raised in the plaint, the petitioner-plaintiff cannot be permitted to lead any evidence in this regard even to rebut the execution of the Will as no right of rebuttal was reserved by her and further the plea of fraud was included in the objection qua execution and the evidence in this regard was required to be led by the petitioner/ plaintiff in affirmative only.

I have heard learned counsel for the parties and gone through the paper-book as well as law cited at the Bar.

No doubt, in view of the law laid down by Division Bench of this Court in case of **Avtar Singh** (supra), the petitioner/ plaintiff was required to bring her entire evidence, qua Will in question while leading her evidence in affirmative or would have reserved her right to lead evidence in rebuttal which apparently was not done by her in this case.

Though having said that, the issue involved in the present case needs to be considered and dealt with from another angle as well. From the pleadings and the issues framed during trial one can make out that the entire controversy revolves around the execution, legality and validity of the Will in question dated 26.03.1985 and thus, the same being sole and substantive point in issue between the parties, requires to be adjudicated upon by providing sufficient opportunity to both the sides to put-forward their entire evidence in support thereof. Thus, depriving the petitioner at this stage to produce hand-writing expert so as to question the execution and validity of Will dated 26.03.1985 would cost serious prejudice to her

rights; whereas on the other hand, allowing the parties to put-forth their case in a complete and comprehensive manner would definitely help the Court to adjudicate their rights completely and effectively.

Thus, in view of the facts and circumstances of the present case, instead of treating the application to be under Order 18 Rule 3 CPC, in the absence of any specific provision having been mentioned therein, within the same statutory framework the same could have been treated and entertained by the trial Court as an application for seeking permission to lead additional evidence. In my considered opinion the right of a party to lead additional evidence is not restricted or regulated under the procedure laid down under Order 18 Rule 3 CPC; but has to be dealt with independently.

The Courts below lost sight of the fact that the Code of Civil Procedure is in fact a compilation of set of procedure enacted to regulate the proceedings initiated at the instance of parties while seeking enforcement of their rights and thus, cannot be used or enforced so as to curtail those rights unless the parties to the *lis* are acting in a grossly negligent manner. Some reasonable latitude, to the extent is possibly required to be granted to the litigants while enabling them to pursue their remedies in a meaningful manner; rather than non-suiting them by adopting hair splitting technicalities. My aforesaid view is even derived from the law laid down by this Court as well as Hon'ble Supreme Court in the following judgments:-

- i) Punjab State Electricity Board Vs. Kewal Singh, 2001 (2) CivCC 686;

- ii) Sangram Singh Vs. Election Tribunal Kotah and another, AIR 1955 SC 425;
- iii) State of Punjab and another Vs. Shamlal Murari and another, AIR 1976 SC 1177; and
- iv) Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (Deceased) through LRs. and ors., 2017 (3) Apex Court Judgments (SC) 679.

Relevant paragraphs of the aforesaid judgments are reproduced hereunder for reference:-

***“PARA 4 of Kewal Singh’s case (supra)***

4. ....Be that as it may, it is too well settled by now that the label of the application i.e. mention of a particular provision, under which a particular application might have been filed, is not decisive. If the court has power to pass a particular order, and for doing so, there is provision in the statute, the application cannot be dismissed only on the ground that the same has not been filed under that particular provision.....”

***“PARAS 16 & 17 of Sangram Singh’s case (supra)***

16. Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.
17. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men

*should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.”*

**PARA 8 of Shamlal Murari’s case (supra)**

8. ....We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non- compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After, all Courts are to do justice, not to wreck this end product on technicalities.”

**PARA 14 of Pankajbhai’s case (supra)**

14. .... keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice.”

Although, the application in hand could have been remanded back to the trial Court for its fresh adjudication by treating it to be for

seeking permission to lead additional evidence, however, considering the fact that the revision itself has remained pending before the Court for almost four years now, the same is being decided on merits so as to avoid any further delay in disposal of the suit.

As regards the powers of the trial Court so as to permit the parties to lead additional evidence, it needs to be pointed out here that the relevant provisions in this regard in the shape of Rule 17A to Order 18 of CPC was omitted by the Legislature as an effect of having promulgated Section 27 of the Code of Civil Procedure Amendment Act, 1999, thereby putting the clock back to the position pre-existing the Act No.104 of 1976, by virtue of which Rule 17-A to Order 18 was incorporated / inserted thereby, resulting into enabling the trial courts to exercise such powers under Section 151 CPC i.e. the inherent powers of the Court which reads as under:-

***“SECTION 151 CPC: Saving of inherent powers of Court—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”***

To the same effect are the observations made by the Hon'ble Supreme Court while dealing with the case of **Salem Advocate Bar Association, Tamil Nadu Vs. UOI**, 2005 (3) RCR (Civil) 530 and para 14 being relevant is reproduced hereunder for reference:-

*“14. In Salem Advocates Bar Association's case, it has been clarified that on deletion of Order 18 Rule 17A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e., 1st July, 2002, would stand restored. The Rule was deleted by*

*Amendment Act of 2002. Even before insertion of Order 18 Rule 17A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18 Rule 17A did not create any new right but only clarified the position. Therefore, deletion of Order 18 Rule 17A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just.”*

In view of the above, the case of the petitioner for granting her permission to lead additional evidence by permitting the hand-writing expert to take photographs of the Will in question needs to be tested upon the touchstone of “due diligence” as set in the case of **Salem Advocate Bar Association’s** case (supra).

The word ‘due diligence’ though not defined anywhere in the Code of Civil Procedure, 1908, however, has been dealt with to some extent by the Hon’ble Supreme Court in the case of **Chander Kanta Bansal Vs. Rajinder Singh Anand, (2008) 5 SCC 117**, and relevant para 16 thereof is produced hereunder:-

“11. ....The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected

*from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness."*

Considering the facts and circumstances of the present case on the touchstone of law laid down by the Hon'ble Supreme Court in the cases of **Salem Tabri's** case (supra) and **Chander Kanta's** case (supra), I find that the petitioner/ plaintiff has been pursuing her case before the trial Court with reasonable diligence expected of her being an ordinary person/ litigant. In this case, the moment, original Will dated 26.03.1985 was placed on record by the respondents for the purpose of proving it, the present application came to be filed at the instance of petitioner/ plaintiff seeking permission to allow her to inspect the file and to take photographs of the Will in question allegedly executed by her predecessor Amarjit Singh for getting the same examined by hand-writing expert as regards its genuineness etc. Besides it, keeping in view the controversy involved in the suit which primarily is about the valid execution of the Will dated

26.03.1985, the evidence now sought to be produced goes to the root of the matter and would help & enable the trial Court to decide the rights of the parties in a compete and effective manner. Still, in order to balance the equities and to make up for the delay in disposal of the suit, if any, on the part of the petitioner for not causing production of this evidence, the same can be redressed to opposite party which in the facts and circumstances of the present case, can be assessed at Rs.25000/- (Rupees Twenty Five Thousand only) to be paid to the respondents.

In view of the discussion made hereinabove, the present petition is allowed. Order dated 05.12.2018 is hereby set aside, permitting the handwriting expert engaged by the petitioner to inspect the suit file and to take photographs for the purposes of submitting a report in this regard.

Considering the fact that the suit is pending since long, the trial Court is requested to dispose of the civil suit expeditiously, preferably within a period of 06 (six) months from today.

01.02.2023  
sonika

**(HARKESH MANUJA)**  
**JUDGE**

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