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

CR-3667-2019

Date of Decision:- 16.08.2023

RAVINDER KUMAR

....Petitioner

Vs.

SHIV MEHMA AND OTHERS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. C.M. Munjal, Advocate for the petitioners.
Mr. Manu Loona, Advocate for the respondents.

AMARJOT BHATTI, J. (Oral)

1. The petitioner Ravinder Kumar has filed the instant revision petition against the impugned order dated 08.05.2019, Annexure P-2, passed by Civil Judge (Junior Division), Fazilka dismissing the application filed by the petitioner/defendant No.1 under Section 151 CPC seeking permission to examine Handwriting and Fingerprint Expert which was dismissed illegally and arbitrarily.

2. Learned counsel for the petitioner argued that plaintiff Shiv Mehma filed suit for declaration that she is owner in possession of land as detailed in the plaint with consequential relief of joint possession of land measuring 63 Kanal 10 Marla situated in village Chak Banwala, Tehsil and District Fazilka, besides other property left behind by the deceased Mehra Bai grand-mother of the plaintiff and Kaushalya Devi mother of the plaintiff. The petitioner along with performa respondents alleged in their

written statement that Smt. Mehra Bai during her life time executed a valid Will dated 26.01.2011 in favour of the petitioner and performa respondent No.1 and Kaushalya Bai mother of the plaintiff already executed a Will dated 01.10.2010 in favour of the petitioner and performa respondent. The issues were framed on 18.12.2017 and the case was fixed for plaintiff's evidence. The plaintiff closed the evidence on 11.01.2018 by examining himself as PW1 and after tendering the documents. The defendants examined as many as 10 witnesses and closed the evidence. The case was fixed for arguments when the plaintiff filed an application under Section 151 CPC to allow him to take photographs from the record produced by the witnesses and to summon witnesses in rebuttal. The said application was allowed vide order dated 14.02.2019, despite raising serious objections that no evidence could be led in rebuttal. Specific issues No.4 and 5 were framed pertaining to the aforesaid Wills. In compliance of the above said order, Expert has been examined as PW2 who was also cross-examined by the counsel for the petitioner and the plaintiff closed the evidence in rebuttal. Thereafter, the present petitioner also filed an application under Section 151 CPC seeking permission to examine Handwriting and Finger Prints Expert on the ground that during the rebuttal evidence the plaintiff has examined the Expert. However, despite due diligence the present petitioner was unable to examine Handwriting and Fingerprint Expert as a witness. The learned Trial Court without appreciating the matter in controversy dismissed the application by passing impugned order dated 08.05.2019 which is Annexure P-2. There was no occasion for the present petitioner to examine the Expert in evidence. The application was declined in an illegal and arbitrary manner.

It is prayed that the impugned order dated 08.05.2019, Annexure P-2, may be set aside and he may also be permitted to examine an Expert to prove the aforesaid Wills.

3. The Revision is opposed by learned counsel for the contesting respondents. It is pointed out that issues were framed in this case and the evidence was led by both the parties. The present respondent/plaintiff examined Handwriting and Fingerprint Expert in rebuttal and the said witness was duly cross-examined. Now at this stage, the petitioner cannot be permitted to examine another Expert to fill up the lacuna in his evidence. Therefore, considering all these facts the application filed by the petitioner to examine Handwriting and Fingerprint Expert was rightly declined by passing the impugned order dated 08.05.2019. The said order was rightly passed and it does not require any interference.

4. I have considered the arguments and have gone through the record. Shiv Mehma minor daughter through her father and next friend filed suit for declaration against Surinder Kumar and others. The suit was contested by Surinder Kumar and Ravinder Kumar defendant Nos.1 and 2 whereas the defendant Nos.3 and 4 were proceeded ex-parte. There is certified copy of order dated 18.12.2017 vide which issues were framed and the case was fixed for plaintiff's evidence. The plaintiff concluded her evidence and thereafter the defendants No.1 and 2 examined witnesses in defence. After the closing of defendants' evidence, the plaintiff examined Fingerprint and Handwriting Expert in rebuttal. Thereafter, the present petitioner i.e. the defendant No.2 also filed an application for examining other Fingerprint and Handwriting Expert which is declined by passing the impugned order dated 08.05.2019, Annexure P-2. The perusal of issues

framed in this case clearly indicates that the issues No.4 and 5 were framed pertaining to the Will dated 26.01.2011 of Mehra Bai and Will dated 01.10.2010 of Kaushalya Bai. The onus to prove these issues was upon defendant Nos.1 and 2. Therefore, the defendants No.1 and 2 were to lead evidence in affirmative to prove the execution of aforesaid Wills. The defendant Nos.1 and 2 closed their evidence in defence and thereafter the plaintiff was given a chance to lead evidence in rebuttal and in that course the plaintiff examined Fingerprint and Handwriting Expert as PW2 and closed the evidence in rebuttal. It is also admitted by the present petitioner that the said Handwriting Expert was duly cross-examined by their counsel. The entire procedure followed by the trial Court clearly indicates that the present petitioner was given full opportunity to lead evidence in defence pertaining to issues No.4 and 5. The onus was fixed on them, therefore, the petitioner/defendants were required to lead evidence in affirmative. Now at this stage, they cannot ask for another opportunity to lead evidence to the evidence led by the plaintiff in rebuttal. Therefore, considering the factual position, I do not find any infirmity in the impugned order dated 08.05.2019 passed by the trial Court and the same is, accordingly, upheld.

The Civil Revision preferred by the present petitioner/defendant No.2 is accordingly declined.

Pending applications, if any, also stand disposed of.

16.08.2023

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Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No

(AMARJOT BHATTI)
JUDGE