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

CR-3810-2023 (O&M)

Date of Decision:- 05.12.2023

JASWINDER KAUR

...Petitioner

Vs.

RAJINDER KAUR AND OTHERS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Gagandeep Singh Sirphikhi, Advocate for the petitioner.

Mr. A.S. Shergill, Advocate for Mr. Navjot Singh, Advocate
for respondent No.1.

Mr. Ankush Rampal, Advocate for
Mr. Kushagra Mahajan, Advocate for respondent No.2.

AMARJOT BHATTI, J. (Oral)

CM-18518-CII-2023

Exemption granted subject to all just exceptions.

Application stands disposed of.

CM-18519-CII-2023

This is an application under Section 151 CPC for bringing
certain facts in the notice of this Court by placing on record document
Annexure A-1.

For the reasons mentioned therein, the application is allowed
and the accompanied document is taken on record.

Main case.

1. The petitioner/defendant No.2 has filed revision petition under
Article 227 of Constitution of India for setting aside the impugned order

dated 22.05.2023 (Annexure P-8) passed by learned Civil Judge (Jr. Divn.), Batala in Civil Suit No.3212 of 2014 vide which the application filed by the respondent No.1/plaintiff for taking photographs of the disputed thumb impression/signatures on the alleged power of attorney of Wassan Singh along with standard signature/thumb impression of Wassan Singh on the admitted documents.

2. Learned counsel for the petitioner/defendant No.2 has placed on the record the copy of plaint titled Rajinder Kaur and another Vs. Manjit Singh and another which is Annexure P-4. The plaintiffs had sought declaration that the plaintiff No.1 is the owner of 96 kanals of land whereas plaintiff No.2 is owner in possession of 16 kanals 12 marlas of land situated in village Tarpala, Tehsil Dera Baba Nanak along with consequential relief of permanent injunction. They had based their claim on the basis of registered Will dated 25.10.2012 in their favour and in para No.2 of the plaint they challenged power of attorney dated 26.11.2012 of Wassan Singh as a false document which was got prepared by defendant No.1 Manjit Singh being lawful general power of attorney holder of Wassan Singh by way of impersonation through Jagir Singh resident of village Dhanne, who is real brother-in-law of defendant No.2. The plaintiff further challenged the sale deed dated 12.02.2013 on the basis of said power of attorney executed by defendant No.1 in favour of defendant No.2. Therefore, the plaintiffs were clear about their stand taken in the plaint and they were supposed to lead their evidence in affirmative. After leading evidence by the petitioner/defendant, the plaintiffs filed application (Annexure P-6) seeking permission to take photographs of disputed thumb impression/signature on power of attorney allegedly of Wassan Singh

along with standard signatures/thumb impression of Wassan Singh on the admitted documents for the purpose of examination by Handwriting and Fingerprint Expert. The said application was contested by filing reply (Annexure P-7). The application was allowed by learned Civil Judge (Jr. Divn.), Batala by passing impugned order dated 22.05.2023 which is Annexure P-8. The learned trial Court has failed to consider that the plaintiffs were required to lead their evidence in affirmative. Later-on, they cannot be permitted to examine Handwriting and Fingerprint Expert to fill up the lacuna in the case. To support his arguments, learned counsel for the petitioner has relied upon the authority of co-ordinate Bench cited in **2015 (11) R.C.R. (Civil) 108 titled as 'Belo Devi Vs. Urmila Devi and others'**, relevant para No.13 runs as under:-

“The trial Court has rightly relied upon the binding precedents of the two Division Bench judgments in Surjit Singh (supra) and Jagdev Singh (supra) under Order 18, Rule 13 CPC, wherein it has been held that the scope and ambit of the provisions to lead evidence in rebuttal on issues, the onus to prove of which is on the plaintiff, would not give a right to the plaintiffs to produce another handwriting expert, at that stage. It was noticed that though liberal consideration is to be given to procedural provisions but by interpretation, it cannot be amended. The rule concisely provides the parties with an option to produce evidence in support of the issues or to reserve it by making a statement to that effect and in the absence of the same, they could not lead evidence in rebuttal, as a matter of right.”

It is prayed that the impugned order dated 22.05.2023 passed by learned Civil Judge (Jr. Divn.), Batala is without justification and the same may kindly be set aside by accepting the present revision petition.

3. On the other hand, learned counsel for the respondent No.1/plaintiff No.1 pointed out that it was the case of defendants that Wassan Singh executed general power of attorney dated 26.11.2012 in favour of Manjit Singh and on that basis he executed valid sale deed dated

12.02.2013 in favour of defendant No.2 that is the present petitioner/defendant No.2. Once the defendants led evidence on this point, thereafter the plaintiffs had a right to lead evidence in rebuttal. Therefore, the impugned order dated 22.05.2023 passed by Civil Judge (Jr. Divn.), Batala does not suffer from any illegality or irregularity and it is fully justified from the facts of the case and the pleadings. Therefore, the revision petition preferred by the petitioner/defendant No.2 may kindly be dismissed.

4. I have considered the arguments and have gone through the record. In order to adjudicate the matter in controversy, pleadings of the parties are important. The copy of plaint is Annexure P-4 whereby the plaintiffs have based their claim on the basis of registered Will dated 25.10.2012 allegedly executed by Wassan Singh in their favour and they have disputed the aforesaid general power of attorney dated 26.11.2012 allegedly executed by Wassan Singh in favour of defendant No.1 and further challenged the sale deed dated 12.02.2013 executed by defendant No.1 in favour of defendant No.2 on the basis of alleged disputed general power of attorney of Wassan Singh. The written statement filed by defendant No.2 is Annexure P-5. Learned counsel for the petitioner/defendant No.2 has given detail of issues framed by trial Court in para No.7 of the petition. The first two issues are regarding the claim of plaintiffs seeking declaration and permanent injunction. Thereafter, there are issues No.2 (b) and 2 (c) regarding execution of alleged general power of attorney by Wassan Singh in favour of defendant No.1 and then execution of sale deed by defendant No.1 in favour of defendant No.2. The onus to prove issues No.2(b), 2 (c), 2 (d) and 2 (e) is on the defendants.

Therefore, once the defendants led evidence on these issues, plaintiffs get a chance to lead evidence in rebuttal.

Therefore, considering the pleadings and the issues framed in this case, I do not find any illegality or irregularity committed by the trial Court by passing impugned order dated 22.05.2023 vide which the plaintiff No.1 was allowed to examine Handwriting and Fingerprint Expert to compare the disputed signatures/thumb impression of Wassan Singh on the power of attorney in dispute with the admitted signatures/thumb impression of Wassan Singh. In-fact this evidence is necessary for proper final adjudication of the case. Therefore, finding no merits in the revision petition filed by the petitioner/defendant No.2 the same is declined by upholding the impugned order dated 22.05.2023 passed by learned Civil Judge (Jr. Divn.), Batala.

Pending application (s), if any, also stands disposed of.

05.12.2023

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(AMARJOT BHATTI)
JUDGE

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