

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CR-5222-2017 (O&M)
Date of decision: 09.04.2024

BANT RAM (DECEASED) THROUGH LRS ..Appellant

Versus

DHARAM PAL AND ORS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anupam Sharma, Advocate
for the petitioner.

Mr. Manpreet Singh Longia, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. In this revision petition, the petitioner (defendant before the trial Court) assails the correctness of order dated 18.07.2017. The suit filed by the respondents was at the stage of rebuttal and arguments after the parties had led their respective evidences. The plaintiff filed an application for allowing the hand writing expert to take photographs of thumb impression of late Sh. Raunki Ram from the Will dated 31.01.1989 and cancellation deed dated 07.01.1989 and compare it with the previous Will dated 07.06.1983. In the application, it was not disclosed that the evidence is sought to be led in rebuttal evidence. The trial Court has allowed the application.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. The learned counsel representing the petitioner (defendant) contends that the plaintiff can be permitted to lead rebuttal evidence only with respect to the issue, onus whereof was upon the defendant. He submits

that though, the respondents have not even prayed for rebuttal evidence, still, no rebuttal evidence is permissible because the onus to prove the Will dated 31.01.1989 was upon the plaintiffs (respondents herein).

4. Per contra, the learned counsel representing the respondents submits that in the interest of justice, the Court should have treated this application as additional evidence.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. On 23.01.2014, the following issues were settled by the trial Court:-

“Publication issued against the defendants no. 3 to 20 received back duly effected but neither the defendants no.3 to 20 nor anybody on their behalf appeared. It is 3:45 pm. Case again called. But again neither the defendants no 3 to 20 nor anybody on their behalf appeared. Therefore, defendants no 3 to 20 are proceeded ex parte. From the pleadings of the party following issues are framed:-

1. Whether the plaintiff is entitled to relief for declaration as prayed for? OPP

2. Whether the plaintiff is entitled to relief for permanent injunction as prayed for? OPP

3. Whether the Will dated 31.01.1989 executed by deceased Raunki Ram in favour of the plaintiff is the last will of the testator? OPP

4. Whether this court has jurisdiction to entertain and to the present suit? OPP Whether the present suit is barred by law? OPP

5. Whether the present suit is barred by law? OPP

6. Whether the present suit is not maintainable in the present form.

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

8. Whether the plaintiff has no cause of action to file the present suit? OPD

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

10. Whether the plaintiff is estopped by his own act and conduct? OPD

11. Whether the suit land has already been partitioned between the parties through family partition/settlement? OPD

12. Relief.

No other issues have been pressed or claimed for. PF/DM and list of witnesses be furnished within a week from today. Now the case is adjourned to 12.08.2014 for evidence of the plaintiff.”

7. It is evident that the plaintiff has propounded the Will dated 31.01.1989 allegedly executed by late Sh. Raunki Ram. The burden to prove the same was placed upon the plaintiff. He was required to prove the execution of the Will in accordance with Section 63 of the Indian Succession Act, 1925 read with Section 68, 69, 70 and 71 of the Indian Evidence Act, 1872.

8. The procedures in the civil suit is governed by the Code of Civil Procedure, 1908. The Court is expected to follow the same while advancing the cause of justice.

9. From reading of the impugned order, the Presiding Judge of the Court was even oblivious of the fact that the civil suit is at the stage of rebuttal.

10. As regard the argument of the learned counsel representing the respondents, it may be noted that the plaintiff has not filed any application for permission to lead additional evidence.

11. Keeping in view the aforesaid facts, the present petition is allowed. The impugned order dated 18.07.2017 is set aside. However, this order shall not debar the plaintiff to file an application for permission to lead additional evidence.

12. All the pending miscellaneous applications, if any, are also disposed of.

April 09th, 2024

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(ANIL KSHETARPAL)
JUDGE

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