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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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Date of decision : 23.10.2024

Beermati alias Veermati (now deceased) through her LR

... Petitioner

Versus

Naresh Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Vineet Chaudhary, Advocate
for the petitioner.

Mr.Mohan Singh Rana, Advocate
for the respondents.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 17.11.2017 (Annexure P-5) passed by the Additional Civil Judge (Sr.Div.), Ambala, vide which an application for seeking permission to get a report from a Fingerprint Expert qua the alleged signatures of Jai Pal son of Balbir Singh on the alleged Will dated 10.05.2004 has been dismissed.

2. Brief facts of the present case are that the plaintiff-petitioner had filed a suit for declaration with respect to the suit land on the averment that her husband Jai Pal was the owner of the said land and he had died on 14.07.2005 intestate and that he did not have any child and the plaintiff was

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the sole legal representative of the said deceased Jai Pal and thus, she became owner of the said property. It was further averred that the plaintiff was a Pardanashin lady and the defendants had manipulated the documents and were alleging a Will in their favour, which was a forged Will.

3. A written statement was filed by the defendants-respondents in which it was stated that a legal and valid Will dated 10.05.2004 was executed by the deceased by virtue of which 1/3rd share was given to the plaintiff-petitioner and other 2/3rd share were given to defendants no.1 and 2 in equal share, i.e., 1/3rd share each. Thus, although the defendants-respondents were not the natural heirs of the deceased but they were claiming their right of 2/3rd property on the basis of Will.

4. An application was filed by the petitioner for getting a report from a Fingerprint Expert qua the signatures of Jai Pal-deceased on the alleged Will dated 10.05.2004 by comparing the same with the standard signatures of the deceased Jai Pal. The said application was opposed and the trial Court vide order dated 17.11.2017 had dismissed the said application. It is the said order which has been challenged before this Court.

5. On 12.12.2017, a Coordinate Bench of this court was pleased to issue notice of motion and also grant interim stay in favour of the petitioner. The said interim order is continued till date.

6. Learned counsel for the petitioner has submitted that since the respondents were relying upon the Will, thus, the onus to prove the Will was on the respondents. It is submitted that on 02.5.2017 an additional issue was framed i.e., issue no.1A on the aspect of the Will and the onus of the



said issue was placed upon the defendants-respondents. It is submitted that the said additional issue was framed after the evidence of the petitioner had already been concluded. It is argued that the defendants-respondents in order to prove the said issue had examined a Fingerprint Expert and since the onus of the additional issue was on the defendants-respondents, thus, in order to rebut the said evidence, the petitioner had moved an application for examining a Fingerprint Expert. It is submitted that once an additional issue with respect to the Will had been framed and onus had been put on the defendants, it was the right of the petitioner to lead rebuttal evidence with respect to the evidence led by the respondents on the said issue and that the same would necessarily include the evidence of a Fingerprint Expert. In support of his arguments, learned counsel for the petitioner has relied upon the judgment of the Coordinate Bench of this Court in the case of ***Budh Singh vs. Mohinder Kaur and others*** reported as ***2017(3) PLR 375***. It is submitted that only rebuttal evidence which the petitioner wishes to produce is the Fingerprint Expert and the report of the Fingerprint Expert and that no prejudice would be caused to the respondents as they would be given adequate opportunity to cross-examine the said witness.

7. Learned counsel for the respondents, on the other hand, has submitted that the impugned order has been passed after considering all the aspects and is a detailed order and there is no illegality in the same and thus, the same deserves to be upheld and the present revision petition deserves to be dismissed.



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8. This Court has heard the learned counsel for the parties and has perused the paper book.

9. It is not in dispute that the plaintiff is the widow of Jai Pal, who was the owner of the property in question. It is also not in dispute that said Jai Pal died issueless and thus, the plaintiff was the only natural heir. It is the defendants-respondents, who would be entitled to 2/3rd of the suit property left by Jai Pal, in case, they are able to prove the due execution of the Will dated 10.05.2004. Thus, as per settled law, the onus to prove the due execution of the Will, in accordance with law, is on the defendants-respondents. Once the said onus is discharged, then, the subsequent question which would arise in the present matter would be as to whether the said Will is forged and fabricated or not. For the person propounding the Will to succeed in their plea, it would have to be necessarily proved by them that the Will was duly executed and in case, they fail to prove due execution of the Will, then, no reliance on the said Will can be placed. In case the Will is not duly proved, the question of the opposite party being able to prove forgery or not of the Will would pale into insignificance.

10. In the present case, it is not disputed that vide order dated 02.05.2017, after the evidence of the plaintiff had closed, an additional issue, i.e., issue no.1A was framed. The said issue, i.e., issue no.1A is reproduced hereinbelow:-

*“1A. Whether Jai Pal Singh has executed the WILL dated 10.05.2005 in favour of plaintiff and defendants to the extent of 1/3rd share each, voluntarily and in a disposing state of mind?
OPD”*



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11. A perusal of the above issue would show that onus of proving the Will dated 10.05.2004 (wrongly mentioned in the additional issue as 10.05.2005) has been rightly put on the defendants. It is not in dispute that in order to discharge the said onus, the defendants-respondents had examined a Fingerprint Expert. It is settled law that in order to rebut the evidence of the defendants on the above said issue, the petitioner has the right to lead rebuttal evidence and since a Fingerprint Expert had been examined by the defendants-respondents, it would be the right of the petitioner to examine a Fingerprint Expert with respect to the signatures of the deceased-Jai Pal and the said evidence of the Fingerprint Expert would come within the meaning of “rebuttal evidence”. In the impugned order, it had been recorded that the plaintiff could lead evidence in rebuttal to the above said issue, however, the trial Court had still not allowed the application and thus, the said impugned order suffers from the said illegality.

12. Another reason for setting aside the impugned order would be the fact that once an additional issue was framed and the plaintiff had already concluded her evidence, then, on the aspect of the additional issue, the petitioner was required to be given the right to lead evidence. In the case of ***Budh Singh (supra)***, a Coordinate Bench of this Court in a similar case had observed that at the time when the plaintiff-petitioner therein had led his evidence, the additional issue had not been framed and the same was framed after his evidence was closed and that the defendant therein had examined a Handwriting Expert under the said additional issue and thus, the



plaintiff therein could not be disentitled to lead rebuttal evidence and to examine the Handwriting Expert. The relevant portion of the said judgment is reproduced hereinbelow:-

“6....Defendants led their evidence on the additional issue because onus to prove this issue was on the defendants. Admittedly, this additional issue was not there when the plaintiff-petitioner was leading his evidence.

7. It is also not in dispute that while leading their evidence on additional Issue No.5 (A), defendants with a view to discharge their onus qua additional issue, examined Fingerprint and Handwriting Expert. Although, this expert examined by the defendants was cross-examined by the plaintiffs, yet that fact alone will not disentitle the plaintiff to lead his evidence in rebuttal qua the additional issue. It is so said because there was no occasion for the plaintiff to reserve his right, invoking the provisions of Order 18 Rule 3 CPC qua additional Issue No.5 (A), at the time of leading his evidence, because said additional issue came to be framed by the learned trial Court at a later stage, after conclusion of the evidence by the plaintiff.

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.....However, in view of the above-said undisputed fact situation, plaintiff was certainly entitled to lead his evidence in rebuttal by producing Fingerprint and Handwriting Expert qua additional issue No.5 (A). Under the circumstances of the present case, denial of opportunity to the plaintiff-petitioner to lead his evidence in rebuttal on additional issue framed by the learned trial Court after closing his evidence in affirmative, would amount to denial of equal opportunity to him, thereby causing a manifest injustice, which will be against the basic principles of natural justice as well.

9. The view taken by this Court also finds support from the



judgments of this Court in Kulwant Singh v. Chand Singh etc., 2015 (3) PLR 129, Jaswinder Singh v. Rajwant Kaur and others, 2014 (2) Law Herald 1138, CR No.203 of 2012 (Kartar Kaur v. Darshan Singh) decided on 25.7.2014, CR No.5628 of 2013 (Gurmeet Singh v. Satgur Singh and others) decided on 17.9.2013, CR No.701 of 2011 (Darshan Singh and others v. Baljinder Kaur and others), decided on 9.10.2013, CR No.2878 of 2013 (Naresh Kumari v. Sh.Ajmer Singh and another) decided on 20.11.2013, CR No.7143 of 2011 (Ranvir Singh v. M/s Dashmesh Traders, Kup Kalan) decided on 9.12.2013 and CR No.884 of 2014 (Hazur Singh v Chander Shekhar) decided on 5.2.2014.”

13. The facts of the present case are quite similar to the facts of the above said case. This Court while examining CR-5453-2024 titled as **“Ramesh Lakhanpal vs. Neetu Sharma”** decided on 20.09.2024, had dealt with the issue as to which party was to first lead the evidence in the case of the parties propounding a Will, and had observed as under:-

“10. The said observations of the trial Court are absolutely in accordance with law. It is a matter of settled law that the person who propounds a Will is required to prove due execution of the same in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872 and is also required to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. It is only after the said aspects are proved that the next question would arise which would be as to whether there is any evidence on the aspect of forgery/fabrication, which aspect would have to be proved by the person alleging forgery and fabrication, which in the present case would be the plaintiff. In case, the defendant is not able to prove the due execution of the Will then even in the absence of proof of any forgery and fabrication, it would



not be possible for the person propounding the Will to seek any benefit on the basis of the Will...

11. The judgment of the **Hon'ble Supreme Court** in the case of **Daulat Ram (Supra)** relied upon by the counsel for the petitioner does not in any way further the case of the petitioner. In the said case, the appellant before the Hon'ble Supreme Court had challenged the Will on the ground that the same was forged and was surrounded by suspicious circumstances. The Hon'ble Supreme Court in para 10 of the judgment, had observed that Will is to be proved in accordance with Section 68 of the Indian Evidence Act, 1872 and for the said purpose, one of the attesting witnesses has to be examined if the attesting witness is alive and subject to the process of the Court and also propounder has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925 to show that the Will has been validly executed and is a genuine document and further has to show that the Will has been signed by the testator out of his own free Will and he was at the relevant time in a sound disposing state of mind and once these elements are established, then onus which rests on the propounder would be discharged. It was also observed that the propounder has also to explain the suspicious circumstances by leading appropriate evidence. It was further observed by the Hon'ble Supreme Court that respondent No.1 therein had successfully discharged the onus of proving the due execution of the Will by examining the attesting witnesses and by giving positive evidence and had also explained the suspicious circumstances and had thereafter observed that there was no evidence led by the appellant with respect to there being any fraud or forgery. In the said circumstances, the order was upheld. **Paras 10, 11, 13 and 14 of the said judgment are reproduced hereinbelow:-**

“1 to 9. xxx xxx



10. Will being a document has to be proved by primary evidence except where the Court permits a document to be proved by leading secondary evidence. Since it is required to be attested, as provided in Section 68 of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. In addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. In order to assess as to whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so.

11. Respondent No. 1 has successfully discharged the onus of proving the due execution of the Will. The two attesting witnesses, PW-3 and PW-5, have clearly stated in their depositions that Prati was in sound disposing mind at the time of the execution of the Will and had



put his thumb mark on the said Will after the same was read over to him in their presence and that they had signed the Will in the presence of the testator and in the presence of each other. They have deposed that Respondent No. 1 was the daughter of Prati and Prati of his own volition had executed the Will in favour of Respondent No. 1. PW-5 is a former Member of Legislative Assembly. PW-3 is a close relation of deceased Prati. There is nothing on record to indicate that they have deposed falsely. Rather their testimonies inspire confidence. PW-2 is the scribe of the Will and neighbour of deceased Prati. He has also deposed that Respondent No. 1 is the daughter of Prati and that he had scribed the Will at the instance of Prati. He has also deposed that Prati had executed the will of his own while in sound disposing state of mind. The Will propounded by the appellants has been specifically revoked/cancelled by the Prati in his later Will stating therein that the earlier Will was got written from him forcibly by the appellants. Assertion in the second Will by the testator about the earlier Will having been forcibly got executed from him by the appellants is corroborated by the fact that in the earlier Will it was shown that the testator had no child or heir except the appellants and the fact of presence of Respondent No. 1, daughter of testator, was suppressed. From the reading of the first Will it is clear that appellants were aware that Prati had a daughter who could at any time lay her claim to the property of her father.

12. xxx xxx

13. *The burden to prove that the Will dated 8.5.1993 executed by Prati in favour of his daughter was forged or was obtained by undue influence or by playing a*



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fraud was on the appellants which they have failed to discharge. No evidence was led by them on either of these points.

14. Be that as it may, the second Will executed by Prati has been proved to be genuine and validly executed by him wherein he has bequeathed his entire property to his daughter, Respondent No. 1. The earlier Will executed in favour of the appellants has been specifically revoked. Since the earlier Will stands revoked it cannot be given effect to.

xxx xxx”

14. From perusal of the above said judgment, it is apparent that firstly, the propounder of the Will has to prove the execution of the Will and then the next question would arise as to whether the said Will is forged or fabricated, which aspect has to be proved by the person alleging forgery / fabrication / non-signatures. In the present case, once the defendants had led their evidence to prove the execution of the Will and had also examined a Fingerprint Expert and had tried to discharge the onus with respect to the due execution of the Will, then, the petitioner cannot be denied the right to examine her own Fingerprint Expert to rebut the said evidence.

15. Thus, the impugned order is illegal and unsustainable and deserves to be set aside and the present revision petition being meritorious, deserves to be allowed and accordingly, the present petition is allowed and the impugned order is set aside and the application filed by the petitioner seeking permission to get a report from a Fingerprint Expert qua the alleged signatures of Jai Pal son of Balbir Singh on the alleged Will dated

10.05.2004 by comparing the same with the standard signatures of the



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deceased-Jai Pal and also by producing the Expert in evidence as well as by producing the report is allowed. The same would be subject to the right of the defendants-respondents to cross-examine the said witness, if produced.

(VIKAS BAHL)
JUDGE

October 23, 2024.
Davinder Kumar

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