

2024.PHHC.151999



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

111+329

CR-4238-2019 (O&M)

Date of Decision : 20.11.2024

PREM SINGH

.... Petitioner

VERSUS

AJIT SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajeshwar Singh Thakur, Advocate for the petitioner.

Mr. Parvinder Singh, Advocate for respondents No.1 and 2.

ALKA SARIN, J. (ORAL)

CM-16089-CII-2024

1. This is an application for impleading the legal representatives of the deceased petitioner – Prem Singh.

2. For the reasons stated in the application, the same is allowed. Legal representatives of the deceased petitioner, as mentioned in para No.3 of the application, are ordered to be impleaded as parties. Vakalatnama signed by the legal representatives of the deceased petitioner has already been appended with the application. The same is taken on record. Amended memo of parties is also taken on record. Registry to scan and tag the same at an appropriate place.

CR-4238-2019

3. Challenge in the present revision petition is to the order dated 23.05.2019 passed by the learned Civil Judge (Junior Division), SBS Nagar

whereby an application filed by the plaintiff-petitioner herein for additional evidence to examine handwriting expert was dismissed.

4. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein along with one Palwinder Kaur filed a suit for declaration to the effect that they are the co-owners to the extent of half share i.e. each having 1/4th share and in possession of immovable as well as movable estate of their brother, namely, Niranjn Singh son of Amar Singh. Defendant-respondents No.1 and 2 filed their joint written statement. In the written statement defendant-respondents No.1 and 2 set up a Will dated 20.07.2013 alleged to have been executed by Niranjn Singh in favour of defendant-respondent No.2. Defendant-respondent No.3 filed a separate written statement also setting up another Will. A separate written statement was filed by defendant-respondents No.4 and 5. At the stage of rebuttal the present application was filed for additional evidence for allowing the fingerprint expert to take photographs of the signatures and thumb impression of Niranjn Singh on the alleged Will dated 20.07.2013 with the original thumb impression and signatures of Niranjn Singh appearing on Form D-1 duly kept and preserved in the Office of Inspector, Food and Supply, Rahon, District SBS Nagar. The said Will dated 20.07.2013, as noticed above, was set up by defendant-respondents No.1 and 2. A reply was filed to the said application. Vide the impugned order dated 23.05.2019 the said application was dismissed. Hence the present revision petition by the plaintiff-petitioner.

5. Learned counsel for the plaintiff-petitioner would contend that the petitioner is the plaintiff and the delay, if any, would be on him. It is further

the contention that in case the additional evidence is not allowed, great injustice would be caused to the plaintiff-petitioner as he would be unable to prove the forged signatures on the Will.

6. *Per contra*, learned counsel for defendant-respondents No.1 and 2 would contend that the Will dated 20.07.2013 was specifically pleaded by defendant-respondents No.1 and 2 in their written statement and qua the same a specific issue being issue No.3 was also framed, the onus of which was cast upon defendant-respondents No.1 and 2. It is further the contention that the issues were framed on 26.11.2015 and since then the plaintiff-petitioner availed more than 25 opportunities, however, failed to lead the evidence.

7. Heard.

8. In the present case in the written statement the Will dated 20.07.2013 was specifically set up by defendant-respondents No.1 and 2. The onus of the same was cast upon defendant-respondents No.1 and 2. On a query by the Court as to whether the plaintiff-petitioner had reserved his right to lead rebuttal evidence, the answer by the learned counsel for the plaintiff-petitioner is in the negative. Hence the evidence, if any, regarding the Will had to be led by the plaintiff-petitioner in the affirmative. Having availed 25 opportunities the plaintiff-petitioner failed to lead his evidence and now at the stage of rebuttal the plaintiff-petitioner had filed the present application only to fill up the *lacuna* in the present case which cannot be permitted in law. The forgery, if any, was known to the plaintiff-petitioner at the time of framing of the issues, however, the plaintiff-petitioner chose not to examine any handwriting expert nor did he reserve his right to lead evidence in rebuttal. Had he reserved

his right to lead evidence in rebuttal, since the onus of proving the Will was on defendant-respondents No.1 and 2, he would have his right to lead evidence on the Will in rebuttal. Having failed to do so, the plaintiff-petitioner now, in order to fill in the *lacunae*, cannot be permitted to lead additional evidence.

9. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.11.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No