



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(117)

CR-7534-2019

Date of decision: - 27.04.2026

Phoolpati

....Petitioner

Versus

Anil and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Vijay Kumar Jindal, Senior Advocate, with
Mr. Abhishek Shukla, Advocate, and
Mr. Sandeep Gautam, Advocate
for respondents No.6 and 7.

VIKAS BAHL, J. (ORAL)

CHALLENGE IN THE PRESENT REVISION PETITION

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 05.11.2019, passed by the Additional District Judge, Hisar (Annexure P-5) vide which the application filed by the plaintiff/petitioner for taking her specimen thumb impressions in the Court for getting comparison done by Handwriting and Finger Print Expert has been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that the petitioner had filed a suit for declaration and had in the said suit



challenged the judgment and decree dated 08.02.1996 passed in Civil Suit No.144-C of 27.01.1996 titled as “Anil etc. Vs. Smt. Phoolpati etc.” passed by the Court of Shri S.K. Kaushik, the then Additional Civil Judge (Senior Division), Hansi, and the subsequent mutation etc. on the ground of impersonation. It is further submitted that the petitioner had got the handwriting and finger print expert examined as PW-2 but the report of handwriting and finger print expert was rejected on the ground that the standard thumb impressions of the petitioner/plaintiff on the plaint, power of attorney etc. used for comparison were not taken before the Court. It is stated that in view of the same, the suit was dismissed and thereafter the plaintiff had filed an appeal and along with the said appeal she had moved an application for taking specific thumb impressions of the appellant therein/Phoolpati before the Court for getting the same compared by the handwriting and finger print expert.

3. It is submitted that the said application, filed before the 1st Appellate Court, has been dismissed by the 1st Appellate Court vide the impugned order which is illegal and deserves to be set aside. It is argued that it is necessary for the plaintiff to prove that the disputed thumb impressions affixed in the written statement and in the statement made in the proceedings which culminated into the passing of the alleged consent decree, were actually not her thumb impressions and to prove the same it is necessary for her to get another handwriting expert report in accordance with law. In support of his arguments, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in



the case of **“Rama Avatar Soni Vs. Mahanta Laxmidhar Das and ors.”**
reported as 2018(4) R.C.R. (Civil) 894.

ARGUMENTS ON BEHALF OF RESPONDENTS NO.6 AND 7

4. Learned senior counsel for respondents No.6 and 7, on the other hand, has submitted that the said application, filed before the Appellate Court, is only to fill up the lacunae and in case such an application is allowed, then, it would result in *de novo* trial. It is further submitted that the petitioner and her counsel were well aware of the issues which were framed and sufficient opportunities were granted to the petitioner/plaintiff and her counsel to lead the evidence and the plaintiff/petitioner had examined a handwriting and finger print expert as PW2 also. It is submitted that the defendants, after taking into consideration the entire evidence, had led the defence evidence and the plaintiff, after having lost the case, cannot now fill up the lacunae and reopen the entire matter and in case such an application is allowed, then, there would be no end/finality to the case.

5. It is further submitted that a perusal of the judgment of the trial Court would show that several valid reasons had been given by the trial Court to dismiss the suit of the plaintiff in addition to rejecting the report of the expert. Para 16 of the judgment has been highlighted to show that the present petitioner/plaintiff, who was defendant No.5 in a subsequent suit titled as “Prem Singh Vs. Santosh etc.”, had in her written statement admitted the fact that she had suffered a consent decree in favour of Anil etc. in Civil Suit No.144-C of 1996, which was decided on



08.02.1996. It is further highlighted that the copy of the said written statement as well as the copy of the statement made by the present petitioner in the said civil suit had been duly exhibited and even the counsel had appeared to prove the same and further the plaintiff, while appearing as PW1, in her cross-examination had further admitted that she had received the summons in the case of “Prem Singh Vs. Santosh” and she had also appeared in the Court and had gone to the counsel/advocate. It is submitted that the judgment of the trial Court after full-fledged trial cannot be reopened by the petitioner/plaintiff by moving an application seeking comparison by expert who had already been examined.

ANALYSIS AND FINDINGS

6. This Court has heard learned counsel for the petitioner as well as learned senior counsel for respondents No.6 and 7 and is of the opinion that the impugned order dated 05.11.2019 passed by the 1st Appellate Court is in accordance with law and deserves to be upheld and the present revision petition is meritless and deserves to be dismissed for the reasons stated hereinafter.

7. It is not in dispute that the petitioner/plaintiff-Phoolpati had filed a suit for declaration to the effect that she is the owner in possession of 208/2502 share in the land measuring 41 kanal, 14 marla comprised in Khewat No.303, Khatoni No.597 and 599 as per jamabandi for the year 1989-1990 situated at Bhaini Amirpur, Tehsil Narnaund, District Hisar and is also the owner in possession of 198/634 share in the land bearing Khasra Nos.160//10 (8-0), 11(8-0), 12/2(8-5), 20/2(7-9), situated at



village Bhaini Amirpur, Tehsil Narnaund, District Hisar, as per jamabandi for the year 1989-1990. In the said suit, a challenge was made to the judgment and decree dated 08.02.1996 passed in Civil suit No.144-C of 27.01.1996 titled as Anil etc. Vs. Smt. Phoolpati etc. by the Court of Sh.S.K. Kaushik, the then Additional Civil Judge (Senior Division), Hansi and also to the subsequent mutation etc. On 06.09.2014, the issues were framed in the said suit, the details of which have been given in para 6 of the judgment dated 21.09.2015, passed by the trial Court, which has been annexed as Annexure P-1. A perusal of the paras 7 and 8 of the said judgment of the trial Court would show that several witnesses were examined by the plaintiff as well as by the defendants in support of their respective case. The plaintiff had examined Sh. Shamsheer Singh Malik, Handwriting and Finger Prints Expert as PW2. It is not the case of the plaintiff that due opportunities were not given by the trial Court to lead evidence.

8. The trial Court, after considering the entire record, dismissed the suit of the plaintiff. Apart from rejecting the report of the expert, several other aspects were taken into consideration by the trial Court in dismissing the said suit including the fact that after the consent decree dated 08.02.1996, which has been challenged in the present suit, another Civil Suit No.416-C of 11.07.1996 titled as “Prem Singh Vs. Santosh etc.” was filed in which the present petitioner/plaintiff was arrayed as defendant No.5 and the written statement filed in the said suit was considered and as per the said written statement the petitioner had



admitted to the passing of the consent decree in favour of Anil etc. in the earlier suit i.e. CS-144-C of 1996. The statement recorded before the Court in the said suit between Prem Singh Vs. Santosh in which the petitioner/plaintiff was defendant No.5, was considered and even the statements of advocates, who had appeared, were also considered. Specific reference was also made to the statement of Phoolpati who appeared as PW1, who in her cross-examination, had admitted that in the said suit of Prem Singh Vs. Santosh she had received summons and had appeared in the Court and had even gone to the counsel/advocate.

9. After having lost the suit, the plaintiff/petitioner filed an appeal. Along with the said appeal, an application, in which no provision of law was referred to, was filed for taking specimen thumb impression of the appellant therein/petitioner before the Court for getting the same compared by the handwriting expert. The said application was opposed. The 1st Appellate Court vide order dated 05.11.2019 dismissed the said application by observing that apart from the fact that the handwriting and finger print expert report, which is already on record, is to be considered by the Appellate Court, allowing the said application would amount to filling up a lacunae which cannot be permitted in appeal. It was observed that handwriting and finger print expert has already been examined by the present petitioner and it was further observed that even otherwise, the trial Court had passed the judgment dated 21.09.2015 upon scrutiny of oral as well as documentary evidence. Accordingly, the said application was dismissed by the 1st Appellate Court and this Court is of the view that



the said order has been passed in accordance with law.

10. In a trial, once the issues have been framed, the parties are made aware of the dispute between the parties and since the onus of the issues is also specifically mentioned, thus, every party is aware of the issues regarding which they would be required to lead evidence to support their case. Generally, it is the plaintiff who leads his evidence first and after the plaintiff has led his entire evidence, the defendant takes into consideration the evidence led by the plaintiff, especially, with respect to the issues of which the onus is on the plaintiff and then accordingly leads his evidence. The judgment thereafter follows, after considering the evidence led on each and every issue. If, before the 1st Appellate Court, an application such as the present application is entertained, in spite of the fact that there is nothing on record to show that due opportunity was not given to the plaintiff to lead her entire evidence, then, the same would give a right to a party to reopen the trial merely on account of the fact that either some evidence has been recorded against such party or that there has been some negligence on his or his counsel's part.

11. In the present case, the plaintiff was aware that there was onus on the plaintiff to prove impersonation etc. Once the plaintiff had already led all evidence with respect to the same and the defendants had also lead evidence to rebut the said evidence, the plaintiff cannot be permitted to fill up the lacunae, moreso at the appellate stage on account of error made by the plaintiff or her counsel. In the present case, as has been detailed hereinafter, several factors had been taken into



consideration by the trial Court while deciding the suit. All the said aspects are open for reconsideration before the 1st Appellate Court but the plaintiff cannot, by virtue of the present application, be permitted to reopen the trial. No judgment has been cited before this Court to show that once the plaintiff has already examined the expert witness, then before the 1st Appellate Court another opportunity is to be granted to the plaintiff/petitioner to re-examine the said witness. In the judgment of the Hon'ble Supreme Court in case of *Rama Avatar Soni (supra)*, relied upon by the learned counsel for the petitioner, the case was not a case where an expert witness was examined during the trial and the party had moved an application before the 1st Appellate Court for removing the lacuna in the report of the said expert as is sought to be done in the present case. Rather the said case was a case in which since the primary issue was with respect to the execution of a Will in probate proceedings, the appellant therein had moved an application for sending the Will for comparison along with admitted signatures of the concerned person, who had executed the Will and the trial Court had initially allowed the same and on challenge made, the High Court had remanded the matter back to the trial Court to consider the said application at a later stage and at the later stage, the trial Court, who was the District Judge therein, had allowed the said application, however the High Court on mis-reading of the pleadings had set aside the said order, which order, on further challenge before the Supreme Court has been set aside and the order of the trial Court/District Judge has been upheld. In the said case, it was considered that



genuineness of the Will was the issue in question and thus, the trial Court who was the District Judge in the said case had rightly allowed the handwriting expert to be examined. The Hon'ble Supreme Court while upholding the order of the trial Court/District Judge set aside the order of the High Court and observed that the High Court had not considered the pleadings in the plaint correctly while observing that the signatures of the executant were not in dispute. Thus, it is apparent that the facts of the said case are completely different from the facts of the present case.

12. The Hon'ble Supreme Court in the case of “*Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*”, reported as (2010) 8 *Supreme Court Cases* 329, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts



subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

13. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order dated 05.11.2019 is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

14. It is made clear that the observations made in the present order should not be construed as an expression on the merits of the main case as the same are only made for considering the validity of the impugned order and the 1st Appellate Court would decide the appeal independent of the observations made by this Court in the present revision petition.

April 27, 2026
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes