



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
231 **CR-6630-2016(O&M)**
Date of decision: 27.03.2025

Bakhshish Singh

...Petitioner(s)

Vs.

Didar Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr. Veneet Sharma, Advocate
for the respondent.

NIDHI GUPTA, J.

Present petition under Article 227 of the Constitution of India is filed by the defendant seeking setting aside of order dated 16.09.2016 passed by the Id. Additional Civil Judge, vide which the Court below has allowed application of the plaintiff for permission of comparison of thumb impression of late Sh. Sadhu Singh s/o Tara Singh appearing on the Will dated 18.01.2012, with the thumb impression of Sadhu Singh appearing on the endorsement of the relinquishment deed dated 12.08.2009.

2. Brief facts of the case are that the respondent/plaintiff had filed a suit dated 01.11.2012 (Annexure P1) praying for declaration to the effect that the plaintiff and defendants are joint owners to the extent of half share in the suit property; Will dated 18.01.2012 in favour of the



petitioner was forged and fabricated and was not binding upon the plaintiff; and mutation No.6900 on the basis of the said Will is also liable to be set aside; with consequential relief of permanent injunction restraining the petitioner/defendant from alienating or mortgaging the suit property.

3. The defendant had filed written statement (Annexure P2) contesting the suit. The issues were framed in the matter. The respondent/plaintiff concluded his evidence in the affirmative on 09.01.2016. Thereafter, the petitioner/defendant led his evidence and produced marginal witnesses, scribe and expert witnesses to prove the Will in question; and even the defendant evidence was closed. At this stage, after conclusion of evidence of the parties, the respondent/plaintiff filed the present application (Annexure P-3), seeking to compare the thumb impression of late Sh. Sadhu Singh s/o Tara Singh appearing on the Will dated 18.01.2012, with the thumb impression of Sadhu Singh appearing on the endorsement of the relinquishment deed dated 12.08.2009. The prayer of the plaintiff was opposed by the defendant by filing detail reply dated 9.9.2016 (Annexure P4). However, the Ld. Civil Judge allowed the application vide impugned order dated 16.09.2016.

4. Learned counsel contends that the impugned order is unsustainable as the burden of proof that the Will was forged and fabricated was on the plaintiff and the plaintiff ought to have led all the evidence in affirmative to prove that the Will was outcome of fraud. The



plaintiff while leading evidence had right to move an application for production of the original Will, however, the plaintiff never moved any such application and closed his evidence in affirmative, without keeping his right reserved for rebuttal evidence. Under these circumstances the plaintiff has got no right to lead rebuttal evidence. Thus, the court below fell in grave error, while allowing such application in the given facts. The court below failed to appreciate as per provisions of order 18 Rule 3 CPC opportunity to plaintiff to lead evidence in rebuttal is to be granted only on those issues where the burden of proof lies upon the defendants and the plaintiff had reserved his right of rebuttal, otherwise his right of rebuttal is forfeited.

5. In support of his contentions, learned counsel for the petitioner relies upon judgments of this Court in **“Kewal Krishan (deceased) through LRS Vs. Raj Kishan & Others” Law Finder Doc ID # 1462841;** **“Urmila @ Pinki Vs. Gulshan Rai & Others” Law finder Doc ID # 888829;** **“Hardial Singh Vs. Davinder Singh” CR-5466-2016 decided on 06.01.2020** and **“Avtar Singh & Another Vs. Baldev Singh & Others” 2015(5) RCR Civil 625.**

6. Per contra, learned counsel for the respondent/plaintiff opposes the assertions made on behalf of the petitioner and submits that the plaintiff had only closed his evidence in affirmative and had not closed his evidence in rebuttal. It is submitted that therefore, the submissions made on behalf of the petitioner are misleading as per the established law.



7. No other argument is made on behalf of the parties.
8. I have heard learned counsel for the parties and given by thoughtful consideration to the rival submissions advanced on behalf of both the parties.
9. It is an admitted fact on record that the Will in question was produced by the defendant/petitioner only during his evidence. It has not been denied by the petitioner that the Will was in possession of the petitioner/defendant and was produced on file only on 08.02.2016; after plaintiff evidence already stood closed on 19.01.2016. Admittedly, the said Will was not brought on record by the petitioner along with his written statement to the suit. Needless to say, had the said Will been placed on record by the petitioner along with his written statement, then the onus would have been upon the plaintiff to rebut the Will in his evidence in affirmative. However, as the said Will has been brought on record by the petitioner after closing of the respondent's evidence on 19.01.2016; and as the petitioner has led expert evidence in respect of the said Will thereafter, then opportunity has to be granted to the respondent to rebut the said evidence. It is also not denied that the respondent had closed his evidence only in affirmative and not in rebuttal.
10. The petitioner can also derive no benefit from the relied upon judgments as the same are distinguishable on facts and law.



11. In view of the above, no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

27.03.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No