



CR-5396-2025 (O&M)

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

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**CR-5396-2025 (O&M)
Decided on 13.08.2025**

Raj Saini @ Raj Kumari

....Petitioner

VERSUS

Bhagat Ram and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Mohan Singh Chauhan, Advocate for the petitioner.

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MANDEEP PANNU J.

1. The present revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC, assailing the order dated 21st July 2025 passed by the learned Civil Judge (Junior Division), Dasuya, whereby the application filed by the petitioner/plaintiff seeking scientific examination of the ink of the unregistered Will dated 10th September 2003 has been dismissed.

BRIEF FACTS

2. The plaintiff instituted a suit for joint possession of land on the basis of natural inheritance. The defendants, in their written statement, set up a defence based upon a Will dated 10th September 2003 allegedly executed in favour of defendant No. 3.

PROCEEDINGS BEFORE THE TRIAL COURT

3. On 29th July 2021, following issues were framed on the basis of the pleadings of the parties:-

- i) Whether the plaintiff is entitled for decree of joint possession of suit property, as prayed for?OPP
- ii) Whether the present suit is not maintainable? OPD



iii) Whether the plaintiff is guilty of concealment of materials facts? OPD

4. Subsequently, vide order dated 08.12.2023, on filing of the amended written statement by defendant No. 3, the issues were recasted as follows:-

i) Whether the plaintiff is entitled for decree for joint possession of suit property as prayed for? OPP

ii) Whether the present suit is not maintainable? OPD

iii) Whether the plaintiff is guilty of concealment of material facts? OPD

iv) Whether Karam Kaur wife of Bhagat Ram executed a legal and valid Will dated 10.09.2003 in favour of Chandan Saini her grandson? OPD

v) Relief.

5. The case proceeded to the stage of evidence. After closure of the plaintiff's evidence, the defendants led their evidence on the issues where the burden was placed upon them, including Issue No. 4 relating to proof of the will.

6. After closure of the defendants' evidence, the matter was listed for rebuttal and arguments. At that stage, the plaintiff moved an application seeking appointment of a handwriting/forensic expert to determine the age of the ink on the original Will dated 10th September 2003.

FINDINGS OF THE TRIAL COURT

7. The learned Trial Court dismissed the application with observations that the plaintiff had knowledge of the defendants' plea of Will from the very beginning. The plaintiff never moved any application for production of the original Will nor summoned the concerned official for its production. The plaintiff had



opportunity to get the ink examined during her affirmative evidence, but failed to avail it. Therefore, at this belated stage, such permission could not be granted.

CONTENTIONS IN THE REVISION PETITION

8. The petitioner contends that the impugned order is unsustainable in law *inter alia* on the ground that issue No. 4, relating to proof of the Will, placed the burden of proof upon the defendants. Further that the plaintiff was entitled to lead rebuttal evidence after the defendants concluded their evidence on the Will; the application for scientific examination was made at the rebuttal stage, which is legally permissible and the trial Court failed to appreciate the settled proposition that where the burden of proof on an issue rests on the defendant, the plaintiff is entitled to an opportunity to rebut that evidence.

9. I have heard learned counsel for the petitioner and have gone through the record.

10. It is well settled that the party on whom the burden of proof lies must first adduce evidence, and the opposite party has a right to lead rebuttal evidence. The Hon'ble Supreme Court in *Civil Appeal No.928 of 2016, titled as Ramkali Soni & Others Vs. Mukta Soni, decided on 08.05.2025* held that the burden to prove a Will lies heavily upon the propounder, and the opposite party must be afforded adequate opportunity to challenge it.

11. In the present case, the burden to prove Will dated 10th September 2003 was on the respondents/defendants. The petitioner/plaintiff, therefore, was entitled to lead rebuttal evidence after the respondents/defendants had concluded their evidence. The application for scientific examination of the ink on the Will was directly connected with rebutting the respondents/defendants' claim.



12. The reasoning of the Trial Court that the plaintiff should have moved such an application during her affirmative evidence is misplaced, as the occasion to rebut the Will arose only after the defendants had led evidence in support thereof.

CONCLUSION

13. In view of the above discussion and in light of the law laid down in case of *Ramkali Soni and Others (supra)*, the impugned order dated 21 July 2025 cannot be sustained.

14. Accordingly, the present revision petition is allowed. Order dated 21st July 2025 passed by the learned Civil Judge (Junior Division), Dasuya, is set aside. The application for scientific examination of the ink on the Will dated 10th September 2003 is allowed.

15. Pending application(s), if any, also stand disposed off.

August 13, 2025
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(MANDEEP PANNU)
JUDGE

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