



**CR-6396-2017 (O&M)**

**Sr.No.118**

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

**CR-6396-2017 (O&M)**

**Reserved on : 26.08.2025**

**Pronounced on : 30.09.2025**

Manil Khara and Another

....Petitioners

Versus

Ranbir Singh and Another

....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

**Present:-** Mr. Sanjiv Gupta, Advocate  
for the petitioners.

Mr. R.S. Randhawa, Advocate,  
Ms. Tarranum Madan, Advocate and  
Ms. Ravinder Kaur, Advocate  
for respondent No.1.

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**PANKAJ JAIN, J.**

Plaintiffs are in revision under Article 227 of the Constitution of India aggrieved of order dated 07.09.2017, passed by Civil Judge (Jr. Division), Patiala, whereby application preferred by plaintiffs/petitioners under Order XVIII Rule 17 read with Section 151 CPC, for further examination of Dr. Inderjit Singh, Handwriting and Fingerprint Expert (PW-1), stands dismissed.

2. Plaintiffs are fighting against their brother and father to claim share in ancestral property. Challenge is to the transfer of property made by father in favour of brother to the exclusion of the rights of plaintiffs by way

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of Transfer Deed dated 12.01.2004 and Civil Court Decree dated 14.11.1990. There is a dispute with respect to execution of Affidavit by Iqbal Singh, defendant No.1-father of plaintiffs. Plaintiffs in order to prove their case examined Handwriting Expert Dr. Inderjit Singh as PW1. He tendered his report in evidence after examining disputed signatures with the standard signatures on appended Will dated 05.04.2008 executed by Iqbal Singh Dhillon, Transfer Deed dated 12.01.2004 and Power of Attorney dated 10.09.2001. The Handwriting Expert and Fingerprint Expert tendered his Affidavit Ex.PW1/A on 21.01.2015. He was cross-examined on 01.12.2016. Evidence of plaintiffs was closed by order. Respondents/defendants in order to rebut the evidence adduced by plaintiffs, examined Navdeep Gupta, Handwriting/Document Expert to prove their case.

3. Plaintiffs claim that at the time the report was tendered by the Expert witness examined by defendants, they realized that the report was tendered by their Expert witness. The disputed affidavit and documents, with which the signatures were compared though were placed on record, but could not be tendered in evidence.

4. Application was moved under Order XVIII Rule 17 CPC read with Section 151 CPC seeking further examination of Dr. Inderjit Singh, PW1, by way of additional evidence. The application was opposed by defendants questioning the maintainability thereof.

5. Trial Court has dismissed the application filed by plaintiffs holding that power to recall a witness already examined under Order XVIII

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Rule 17 CPC can be exercised by the Court to clear ambiguity and not to fill up the lacuna in evidence.

6. Counsel for the petitioners has assailed the impugned order passed by the Trial Court. It has been contended that the documents which are sought to be tendered in evidence by re-examining PW1, are already part of report. The same were referred to in the examination-in-chief of PW1. It is not a case where the documents are not on the file. The same are in fact part of the record but could not be tendered in evidence. Even though photographs taken from the said documents Ex.P2 to Ex.P29 have been tendered in evidence. It is not a case of filling up the lacuna but is a case wherein a bonafide mistake made by counsel for plaintiffs is sought to be rectified. Reliance is being placed upon judgments in the matters of *Phool Chand Jain vs. Smt. Jotri Devi Jain, 2002(1) RCR(Civil) 233* and *Naveen Kumar vs. Kulbhushan Bhardwaj and another, passed in CR No.1703 of 2023, decided on 19.09.2024* and *K.K. Velusamy vs. N. Palanisamy, 2011(11) SCC 275*. It has been further contended by counsel for the petitioners that rules of procedure should not be allowed to dislodge genuine cause pleaded by plaintiffs in the application.

7. *Per contra*, Mr. Randhawa has opposed the prayer made in the revision petition. It has been contended that provision as contained under Order XVIII Rule 17 CPC cannot be allowed to fill up the lacunas. The main purpose of the provision is to enable the Court to clarify any doubt which it may have with regard to the evidence led by the parties. Mr. Randhawa submits that power under Order XVIII Rule 17 CPC has to



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*to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate [(2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198]). Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.*

*9. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to*

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*reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.*

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*10..... We may summarise them as follows:*

*(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is “right” and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.*

*(b) As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.*

*(c) A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words the court cannot make use of*



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*routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.*

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12. Applying the aforesaid parameters to the present case, this Court finds that the situation canvassed in the present revision is the one

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where the Courts needs to exercise power under Order XVIII Rule 17 CPC read with Section 151 CPC. Dr. Inderjit Singh, PW1, tendered his examination-in-chief by way of affidavit Ex.PW1/A. Part of his testimony reads as under:-

*“2. That I have carefully and thoroughly examined the disputed signatures of ‘Iqbal Singh Dhillon’ written as ‘I.S. Dhillon Brig.’ Marked as Q1, Q2 on the Photostat copy of affidavit dt. 17.05.2005 and compared the same with the standard signatures of ‘Iqbal Singh Dhillon’ also written as ‘I.S. Dhillon Brig.’ Marked as S1 to S5 on the Photostat copy of Will dt. 5-5-2008, Vasika No.94/3 registered in the office of Sub Registrar Patiala; S6 to S10 on the Photostat copy of the Transfer Deed dt. 12-1-2004, Vasika No.15422 registered in the office of Sub-Registrar, Patiala and S11, S12 marked on the Photograph taken from the original General Power of Attorney dt. 10-9-2001, registered on 11-9-2001, vide Vasika No.1167 in the office of Sub Registrar, Patiala.”*

13. His report has also been tendered in evidence. In report he refers to the documents i.e. Will dated 05.04.2008 executed by Iqbal Singh Dhillon, Transfer Deed dated 12.01.2004 and Power of Attorney dated 10.09.2001 as under:-

*“It is respectfully submitted that I have carefully and thoroughly examined the disputed signatures of Iqbal Singh Dhillon written as ‘I.S. Dhillon Brig.’ marked as Q1, Q2 on the Photostat copy of affidavit dft. 17-5-2005 and compared the same with the standard signatures of ‘Iqbal Singh Dhillon’, also written as ‘I.S. Dhillon Brig.’ marked as S1 to S5 on the Photostat copy of Will dt. 05-05-2008. Vasika No.94/3*

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*registered in the office of Sub Registrar, Patiala; S6 to S10 on the Photostat copy of Transfer Deed dt. 12-1-2004. Vasika No.15422 registered in the office of Sub Registrar, Patiala and S11, S12 marked on the Photograph taken from the original General Power of Attorney dt. 10-9-2001 registered on 11-9-2001 vide Vasika No.1167 in the name of office of Sub Registrar, Patiala.*

*I have examined the disputed and the standard signatures with the help of magnifying lens of 5X, 10X and 20X power, colour corrected magnifiers, dissecting microscope, linen counter and the other necessary instruments.*

*Photographs have also been prepared for demonstration purposes.”*

14. He was cross-examined regarding the signatures of Iqbal Singh on the said documents. Admittedly, the documents though were referred in the testimony of the witness but were not tendered in evidence.

15. In the considered opinion of this Court, by allowing re-examination/further examination of PW1 with an object of tendering the documents referred to in the examination-in-chief as well as the report of Handwriting Expert, the report shall only come within the realm of consideration. By its very nature science of handwriting is not a perfect science. The report tendered in evidence regarding handwriting thus is only an evidence to be considered and cannot be relied upon. Thus, two divergent report shall aid the Court to analyse them comparatively.

16. In view of above, this Court finds that the present revision merits acceptance. Consequently, the present revision is ***Allowed***. Impugned

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order passed by the Trial Court is hereby set aside. The application filed by petitioners/plaintiffs seeking further examination of Dr. Inderjit Singh, PW1, by way of additional evidence by tendering documents, as mentioned in affidavit formulating the evidence, is allowed.

17. Parties shall produce a copy of this order before the Trial Court on the next date of hearing. The Trial Court shall fix a date granting opportunity to plaintiffs to further examine PW1. The cost of Rs.30,000/- paid by petitioners pursuant to notice of motion order dated 20.09.2017 shall be disbursed to the respondents/defendants accordingly.

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

**( PANKAJ JAIN )**  
**JUDGE**

**September 30, 2025**

*ashish*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No