

(2001) 03 P&H CK 0063

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4124 of 1999

Balbiro

APPELLANT

Vs

Mejo

RESPONDENT

Date of Decision: March 7, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 17

Citation: (2001) 2 CivCC 479 : (2001) 2 RCR(Civil) 354

Hon'ble Judges: Bakhshish Kaur, J

Bench: Single Bench

Advocate: Mr. B.R. Mahajan, for the Appellant; Mr. D.S. Pheruman, for the Respondent

Judgement

Bakhshish Kaur, J.

An application under Order 18 Rule 17-A of the CPC (in short "the Code") filed by the defendants-petitioners was dismissed by the learned Civil Judge (Senior Division) Patti vide the impugned order. Aggrieved by that order dated June 03, 1999, the petitioner has preferred this Civil Revision.

2. The plaintiffs (now respondents) filed a suit for declaration that they are co-sharers of the suit land to the extent of 5/6th share with consequential relief of permanent injunction restraining the defendants from alienating the suit land or dispossessing them forcibly except in due course of law or, in the alternative a suit for joint possession.

3. The suit was resisted by the petitioners. Issues arising out of the pleadings of the parties were framed. Parties led evidence. The plaintiffs have led evidence in rebuttal as well. The petitioners who are claiming their exclusive ownership over the property on the basis of the sale deeds dated 2.8.1991 have also claimed their ownership on the basis of the will dated 1.8.1985 allegedly executed by Jarnail Singh in their favour. They want to examine Shri K.N. Parshad, document expert, for the purpose of comparing the disputed signatures of Shri Jarnail Singh on the will and

the sale deed with the specimen signatures for the purpose of rebutting the evidence led by the plaintiffs who had examined Shri R.S. Bal, handwriting expert.

4. The substantive question under consideration is whether the defendants can be allowed to rebut the evidence of the plaintiff produced in rebuttal. Both the documents i.e. sale deed dated 2.8.1991 as well as the will dated 1.8.1991 allegedly executed by Jarnail Singh in their favour, were not only in their knowledge but also in their possession. Now, at this stage, once the plaintiffs have already led evidence to rebut the case set up by the defendant, they cannot be allowed to lead evidence in rebuttal to the rebuttal evidence led by the plaintiffs. The prayer made by them in the application under Order 18 Rule 17-A of the Code reads as under :-

"It is, therefore, respectfully prayed that necessary permission may kindly be granted to produce Shri K.N. Parsad, document expert in additional evidence for comparing the disputed and admitted signatures of Jarnail Singh in the interest of justice."

5. In Tarlok Singh v. Sohan Singh 2000(1) RCR 723, it was held that expert could be examined while leading evidence in affirmative and not by way of additional evidence after the parties have closed their evidence. The petitioners have already conducted cross-examination of Shri R.S. Bal, document expert examined by the plaintiffs. Thus, they cannot be allowed to lead evidence in rebuttal to the rebuttal evidence led by the plaintiffs. The application does not fulfil the requirements of Order 18 Rule 17-A of the Code. Only that evidence can be permitted to be led by way of additional evidence which was either not in the knowledge of the party or could not be produced despite due diligence, as held in Tarlok Singh's case (supra).

In view of the above, there is no merit in this Civil Revision, The same is hereby dismissed.

6. Revision dismissed.