
Ran Singh Vs Pirthi and Others

Civil Revision No. 2463 of 1994

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 7, 1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 18 Rule 17A, 15

Citation: (1997) 1 CivCC 667 : (1996) 114 PLR 511 : (1996) 3 RCR(Civil) 619 : (1997) 2 RCR(Civil) 108

Hon'ble Judges: Sarojnei Saksena, J

Bench: Single Bench

Advocate: T.P. Singh, for the Appellant; Pritam Saini and Rajneesh Narula, for the Respondent

Final Decision: Dismissed

Judgement

Sarojney Saksena, J.

Petitioner defendant has filed this revision against trial Court's order dated 6.5.1994 whereby plaintiff-respondent's

petition filed under Order 18 Rule 17-A C.P.C. is allowed and they are given an opportunity to examine Surjan Singh, previously working as

Clerk with Sh. V.P. Saini, Advocate, Kurukhetra. Some time the law which is meant to impart justice and fair play to the litigant is so torn and

twisted by a morbid interpretive process that instead of giving heaven to the disappointment and dejected litigants, it negates their well established

rights in law. The present case reveals the sad story of a helpless ailing plaintiff who approached court for his redressal alleging that his own counsel

Sh. V.P. Saini, Advocate, Kurukshetra has betrayed his confidence by misusing the thumb impression in a different suit by filing written statement

on his behalf whereby ownership of his valuable properties is declared in favour of defendant petitioner. The facts of this case are that the plaintiff,

Pirthi and his wife filed a civil suit for declaration to the affect that the decree dated 31st March, 1985 passed by the Sub Judge 1st Class,

Kurukshetra is void, ineffective and illegal as the same has been obtained by playing fraud on them. They also prayed consequential relief of

permanent injunction restraining the defendants Ram Singh and Khushi Ram from interfering in the possession of the plaintiffs suit land. Plaintiffs

adduced their evidence; thereafter defendants adduced their evidence. Plaintiffs did not produce any rebuttal evidence and when the case was at

final stage, plaintiffs filed a petition under Order 18 Rule 17-A C.P.C. praying that they be allowed to examine Surjan Singh who was working as

Clerk with Sh. V.P. Saini, Advocate in the year 1984-86 and the words ""LTI of Pirthi"" were written by Surjan Singh on the application, power of

attorney and written statement of the suit leading to impugned decree dated 21.3.1985 against which this suit is filed by them.

2. The defendant-petitioners contested the petition alleging that the case is now at the final argument stage, the petition is delayed, plaintiff-

respondents have not provided details of the file which they intend to summon. They also denied that Sh. V.P. Saini, Advocate ever misused thumb

impressions of Pirthi or that the words ""LTI of Pirthi"" were ever written by Surjan Singh on the application, power of attorney and written

statement of the earlier suit, culminating into impugned decree dated 21.3.1985. They also raised an objection that the plaintiff-respondents intend

to fill up lacunae being earlier left they were leading their affirmative evidence.

3. Considering the facts of the case, the lower Court allowed the plaintiffs petition by the impugned order and imposed a cost of Rs. 200/- to

compensate the defendant petitioners for the delay being caused thereby.

4. The respondent-plaintiffs learned counsel argued that defendant-petitioner Ran Singh is minor son of Kanshi Ram who is brother of Pirthi's

sister's husband. Sh. V.P. Saini, Advocate, Kurukshetra was plaintiffs previous counsel in other cases. During that time, Kanshi Ram and Ran

Singh were accompanying him to the counsel's office. At that time, Sh. V.P. Saini, Advocate obtained thumb impressions of Pirthi on various

blank papers and power of attorney which he (Pirthi) appended thereon under the faith which a client reposes in his counsel. Later on these thumb

impressions of Pirthi were misused in a Civil suit which these defendants filed against Pirthi claiming declaration of their ownership in the disputed

suit land. The respondent-plaintiffs learned counsel submitted that declaration suit was filed on 20th March, 1985. A petition, power of attorney

and written statement were filed purporting to have been filed on behalf of Pirthi on 21st March 1985. On that very date the suit was decreed.

When later on Pirthi came to know of this fraud, he lodged a complaint against Sh. V.P. Saini, Advocate with the police whereby a criminal case is

registered against Sh. V.P. Saini, Advocate under Sections 468/471/419/420 I.P.C. This criminal case is still pending. Pirthi also filed civil suit No.

742/93 seeking declaration that the said decree dated 21.3.85 passed by Sub Judge Ist Class, Kurukshetra is void, ineffective and illegal as it was

obtained by practicing a fraud on him and he also sought consequential relief of permanent injunction restraining defendants-petitioner from

interfering in his possession of the suit land. Plaintiffs adduced their affirmative evidence; thereafter defendants examined their witnesses. This

witness Surjan Singh was summoned by the plaintiffs. The respondent-plaintiffs learned counsel clarified that as at that time, the concerned file was

not available, they could not know that on the said disputed documents (application power of attorney and written statement) words ""LTI of Pirthi

were written by Surjan Singh who was working as Clerk with Advocate, Sh.V.P. Saini during the years 1984-1986, they could not examine

Surjan Singh and they closed their rebuttal evidence as well but later on when they summoned the said file in the court and came to know that

those words "LTI of Pirthi" were in the handwriting of Surjan Singh, they filed a petition under Order 18 Rule 17-A CPC for seeking permission to

examine this witness Surjan Singh.

5. The principles of procedural law are hand-made to justice. No party can be denied the right to examine any witness on the mere ground that this

evidence that party could have adduced at that time when he was adducing affirmative evidence or when he had right to adduce rebuttal evidence.

It is also no ground to reject such a petition on a blanket rule that since this evidence was available to the plaintiffs or it was within their knowledge,

then at the fag end of the trial, they should not be allowed to adduce such evidence. To prove that these words ""LTI of Pirthi"" are in the hand-

writing of Surjan Singh who was working as Clerk with Sh. V.P. Saini, during the period, is essential to determine the real controversy in the suit.

The petitioner defendants can be compensated with costs for the delay. Lower court has already allowed the petition at the cost of Rs."" 200/-.

Considering gravity of the facts and circumstances of the case, in my considered view, the trial Court has not fallen into any error in allowing the

said petition and giving an opportunity to the plaintiff-respondents to examine Surjan Singh. Resultantly, the revision being meritless is hereby

dismissed.