

(2010) 11 P&H CK 0404

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6443 of 2010 (O and M)

Satyavir Singh

APPELLANT

Vs

Parkash

RESPONDENT

Date of Decision: Nov. 26, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

CM No. 30196.CII of 2010

1. The application is allowed and zimini orders of the trial court Annexure P/6 collectively are taken on record subject to all just exceptions.

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2. Plaintiff Satyavir Singh has filed the instant revision petition under Article 227 of the Constitution of India challenging order dated 8.5.2010 passed by learned Civil Judge (Junior Division), Rohtak thereby dismissing application Annexure P/5 moved by Plaintiff/Petitioner for directing the Defendant/Respondent to give his specimen thumb impressions for comparison with his disputed thumb impressions on compromise dated 20.6.2001, Annexure P/3.

3. I have heard learned Counsel for the Petitioner and perused the case file whereas none has put in appearance on behalf of the Respondent inspite of service either on the preceding date or today.

4. Learned Counsel for the Petitioner contended that Plaintiff's suit is based on compromise Annexure P/3 but the Defendant has denied the said compromise and

therefore, it is essential to compare thumb impression of Defendant on the said compromise with his specimen thumb impressions.

5. I have carefully considered the aforesaid contention and find considerable merit therein. The Plaintiff's whole case is based on the aforesaid compromise Annexure P/3 which has been denied by the Defendant-Respondent. Compromise purports to bear thumb impression of Defendant. It is, therefore, essential for the Plaintiff to examine fingerprint expert for comparison of the said thumb impression on compromise Annexure P/3 with specimen thumb impressions of the Defendant. Learned trial court dismissed the application Annexure P/5 by observing that court cannot be used as instrument for collecting evidence on behalf of the parties. This approach of the trial court is patently illegal and perverse and therefore, unsustainable. It is not question of collection of evidence on behalf of any party. On the other hand, Plaintiff has no option but to request the trial court for obtaining specimen thumb impressions of the Defendant for comparison. The trial court has acted illegally and has refused to exercise jurisdiction which vested in it. The impugned order is completely unsustainable and deserves to be set aside in exercise of revisional jurisdiction.

6. However, it has to be noticed that application Annexure P/5 moved by the Plaintiff-Petitioner is highly belated. Perusal of zimini orders of the trial court reveals that the said application was moved by the Plaintiff-Petitioner after availing as many as 17 opportunities for his evidence. The application is, thus, highly belated. In addition to it, after the said application was dismissed by impugned order, the case was adjourned to 17.8.2010 for evidence of the Plaintiff at own responsibility with stipulation of last opportunity. On 17.8.2010, counsel for the Plaintiff made application in the trial court for adjournment on the ground that Petitioner had gone into revision before the High Court and consequently the trial court adjourned the case to 5.10.2010. However, the instant revision petition was actually filed on 30.9.2010. It is, thus, apparent that on 17.8.2010 false assertion was made on behalf of the Plaintiff in the trial court that the Plaintiff had gone in revision before this Court. Thus, for all these reasons the Plaintiff-Petitioner has to be subjected to heavy costs.

7. For the reasons aforesaid, the instant revision petition is allowed and impugned order dated 8.5.2010 passed by the trial court is set aside. Application Annexure P/5 moved by the Plaintiff in the trial court is allowed and Defendant is directed to give his thumb impressions in the trial court, subject to payment of Rs. 3000/-as costs precedent payable by Petitioner to Respondent.