

(2013) 08 P&H CK 0774

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4394 of 2012

Buta Singh

APPELLANT

Vs

Balwant Kaur and
Others

RESPONDENT

Date of Decision: Aug. 22, 2013

Acts Referred:

Constitution of India, 1950 – Article 227

Citation: (2013) 08 P&H CK 0774

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

Bench: Single Bench

Advocate: Harsh Aggarwal, for the Appellant; Madan Lal, Advocate for Mr. Raman Mahajan, Advocate for Respondent No. 1 and Mr. P.K. Gupta, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

This revision petition under Article 227 of the Constitution of India has been instituted by defendant no. 1-Buta Singh

assailing order dated 31.5.2012 Annexure P/8 passed by the trial court thereby dismissing applications Annexures P/4 and P/6 filed by the

petitioner for additional evidence. Suit was filed by respondent no. 1-plaintiff Balwant Kaur (since deceased and represented by her son and legal

representative Sukhi Jagdeep Singh) against petitioner and respondents no. 2 and 3 as defendants. Original plaintiff was sister of defendant no. 1 -

petitioner. The dispute relates to inheritance of their father Uttam Singh. Defendant no. 1 has set up registered Will allegedly executed by Uttam

Singh in favour of petitioner-defendant no. 1.

2. In application Annexure P/4, defendant no. 1 alleged that he wants to examine Document Expert to prove signatures of testator Uttam Singh

and attesting witness Pardhan Singh (both since deceased) on the disputed Will. It was pleaded that earlier defendant no. 1 was not having

knowledge of any standard signatures of Uttam Singh and Pardhan Singh, but now he has been able to trace the same, necessitating the

examination of Document Expert.

3. Plaintiff by filing reply Annexure P/5 opposed the application and also pleaded that defendant no. 1 has not disclosed the documents allegedly

bearing standard signatures of Uttam Singh and Pardhan Singh. Thereupon, defendant no. 1 filed supplementary application Annexure P/6

mentioning two documents one having signatures of Uttam Singh and the other having signatures of Pardhan Singh. Plaintiff by filing reply Annexure

P/7 opposed the said application also.

4. Learned trial court vide impugned order Annexure P/8 has dismissed both the applications filed by defendant no. 1 who has, therefore, filed this

revision petition to challenge the said order.

5. I have heard counsel for the parties and perused the case file.

6. Counsel for defendant no. 1-petitioner reiterated the averments made in the applications Annexure P/4 and P/6 and also submitted that

defendant no. 1 has been able to lay hands on some more documents also bearing signatures of Uttam Singh and Pardhan Singh for comparison by

Document Expert.

7. On the other hand, counsel for respondent no. 1-plaintiff contended that there is no ground for permitting the petitioner to lead proposed

additional evidence because he was granted sufficient number of opportunities to lead his evidence.

8. I have carefully considered the matter. Trial court has dismissed the applications of defendant no. 1 merely on the ground of delay observing that

he was granted at least 17 opportunities to conclude his evidence on 5.5.2011 after the plaintiff had closed her evidence on 16.8.2010. However,

application for additional evidence could not be dismissed merely on this ground. On the contrary, necessity for seeking permission to lead

additional evidence arises only when the party fails to lead such evidence at appropriate stage. Moreover, observation of the trial court that

defendant no. 1 availed 17 opportunities till closing his evidence on 5.5.2011 after the plaintiff closed her evidence on 16.8.2010 also does not

appear to be factually correct. In fact, defendant no. 1 had closed his evidence on 3.11.2008 vide his statement Annexure P/3. Counsel for

defendant no. 1 - petitioner has pointed out that since onus to prove the Will set up by defendant no. 1 was on him, he was asked to lead the

evidence first and it was thereafter that the plaintiff led her evidence. It appears that after defendant no. 1 closed his affirmative evidence on

3.11.2008 vide statement Annexure P/3, the plaintiff closed her evidence on 16.8.2010. Zimini orders of the trial court shown by counsel for

respondent no. 1 reveal that after plaintiff closed her evidence on 16.8.2010, the case was adjourned for evidence of defendants no. 2 and 3 and

their evidence was closed on 5.5.2011. Consequently, observation of trial court regarding 17 opportunities granted after 16.8.2010 till 5.5.2011

pertains to opportunities granted to defendants no. 2 and 3 and not to defendant no. 1.

9. Be that as it may, defendant no. 1 has specifically pleaded that he could not examine the Document Expert while he was leading his evidence

because he was not having standard signatures of Uttam Singh testator and Pardhan Singh attesting witness. Now defendant no. 1 has been able to

lay hands on some documents bearing signatures of Uttam Singh and Pardhan Singh. In view thereof, defendant no. 1-petitioner should have been

allowed to lead proposed additional evidence on payment of costs. Respondents will get an opportunity to lead evidence in rebuttal of the

additional evidence of the petitioner. In these circumstances, respondent no. 1-plaintiff can be compensated by way of costs. Resultantly, I find that

impugned order passed by the trial court suffers from illegality and jurisdictional error. The instant revision petition is, therefore, allowed. Impugned

order Annexure P/8 passed by the trial court is set aside. Applications Annexure P/4 and P/6 filed by defendant no. 1-petitioner for additional

evidence are allowed and defendant no. 1-petitioner is permitted to lead proposed additional evidence including more documents traced by the

petitioner allegedly bearing signatures of Uttam Singh testator and Pardhan Singh attesting witness subject to payment of Rs. 7500/- as costs

precedent to respondent no. 1-plaintiff.