208 (2)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 13.8.2015

CR No. 1231 of 2012 (O/M)
Puroshattam Dass ..... Revisionist

Versus

Sham Babu and others ...... Respondents

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CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jaswant Jain, Advocate, for the appellant
in both the cases.

Mr. N.S. Shekhawat, Advocate, for respondents
in both the cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

By this common judgment, I will dispose of CR No. 1231 of 2012 and CR No. 1232 of 2012. In CR No. 1231 of 2012, the revisionist has challenged the order dated 9.2.2012 (Annexure-P-3), passed by the learned Civil Judge (Senior Division), Rewari, vide which his application to produce Shri Kamalkant Khandelwal, Handwriting and Fingerprint Expert in rebuttal evidence alonghwith affidavit was dismissed. In CR No. 1232 of 2012, the revisionist has challenged the orders dated 9.2.2012 (Annexure-P-3 in CR No. 1231 of 2012) and 18.2.2012 (Annexure-P-3), passed by the learned Civil Judge (Senior Division), Rewari, vide which the application for permission to lead additional evidence to examine said Kamalkant Khandelwal, Handwriting and Fingerprint expert, was dismissed.

The brief facts involved in the present case are that the plaintiff (revisionist herein) had filed a suit for declaration and permanent injunction wherein the sale deed dated 26.7.2004, in favour of defendant No. 4 (respondent No. 4 herein), was challenged. The case of the plaintiff/revisionist is that defendants No. 1 and 2 (respondents No. 1 and 2 herein), namely, Sham Babu and Mahesh Chand had executed a General Power of Attorney in the year 1996 in favour of plaintiff/revisionist and defendant/respondent No. 3 regarding land measuring 19 Marlas, which was agreed to be sold by defendants/respondents No. 1 and 2 in favour of plaintiff/revisionist on 5.4.1996. The entire consideration was paid and possession was delivered. According to the plaintiff/revisionist, the said general power of attorney was revoked by defendants No. 1 and 2 on 1.10.1997 and a sale deed was executed in the year 2004 in terms of agreement of 1996. It further comes out that as per the pleadings, defendant No. 3, who was one of the general power of attorney holders of 1996 agreement, sold the property in dispute to defendant No. 4 on 13.11.2003 on the basis of said power of attorney.

Suffice to say that in the written statement, defendants have denied the alleged cancellation of power of attorney and they claimed that the sale deed was validly executed.

From the pleadings, following issues were framed :-

> "i) Whether the plaintiff is owner in possession of suit property ? OPP
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> ii) Whether the Sale Deed dated 13.11.2003 and mutation dated 23.12.2003 are illegal, null and void ? OPP "

Thereafter, both the parties led the evidence. When the evidence of defendant was being led, he led the evidence of handwriting and fingerprint expert to prove that the affidavit of revocation, executed by plaintiff and defendant No. 3, does not bear the signatures of defendant No. 3 and consequently, that would mean that the defendant wants to prove that the revocation of power of attorney by defendants No. 1 and 2 is not valid and consequently, the sale deed executed by defendant No. 3 is valid.

I have heard learned counsel for the parties and have also carefully gone through the file.

The learned counsel for the revisionist has argued that no specific issue was framed in this case that whether the signatures of defendant No. 3 on the power of attorney are forged. The only issue was regarding whether the sale deed is illegal, null and void. Accordingly, the plaintiff led the evidence and proved the documents. In the defence, defendants have led the specific evidence in the form of evidence of the handwriting and fingerprint expert to show that the signatures of defendant No. 3 on said affidavit of revocation of power of attorney are forged. In this way, the plaintiff was taken by surprise and therefore, now he wants to lead the additional evidence in the form of examination of his handwriting and fingerprint expert to prove that whether the said signatures of defendant No. 3 are genuine.

On the other hand, the learned counsel for respondents has argued that affirmative evidence was to be led to prove that the sale deed is illegal and this included the factum that the affidavit of revocation of power of attorney is genuine. Consequently, when there is no issue, the additional evidence could not be allowed. Such evidence should have been led in positive evidence by the plaintiff.

After considering the rival contentions of the parties, I am of the view that from the pleadings, the trial Court had not framed the proper issues. When the fate of sale deed 13.11.2003 was dependent upon affidavit of revocation of power of attorney, which was denied, then a specific issue should have been framed on the said point. It appears that since there was no issue as to whether the affidavit bears the forged signatures of defendant No. 3, the plaintiff simply led the positive evidence to prove the signatures of defendant No. 3. Now, since the defendants have led the evidence of handwriting and fingerprint expert to prove that the signatures of defendant No. 3 are forged on the said affidavit of revocation of power of attorney, therefore in the interest of justice, it is held that the plaintiff should not be taken by surprise and should be allowed opportunity to lead evidence to rebut the said evidence of the expert. In this case, though there is no issue for rebuttal, but there is failure on the part of trial Court to frame proper issues. Infact from the pleadings, rebuttal would arise to specific issue, which was not framed in this regard. Consequently, the plaintiff was misled.

In view of the facts and circumstances, I am of the view that when proper issues have not been framed by the lower Court, it is a proper case where the rebuttal evidence sought to be led by the plaintiff in the form of leading the evidence of handwriting and fingerprint expert should be allowed. Accordingly, the application for leading additional evidence is allowed. Consequently, CR No. 1232 of 2012 is allowed. As a result of the same, CR No. 1231 of 2012 has become infructuous and is disposed of as such.

(KULDIP SINGH)
JUDGE

13.8.2015
sjks