

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1925 of 2014

Date of Decision: February 21st, 2015

Baljit Singh

.....Petitioner

versus

Prem Kumar Sharma and ors.

.....Respondent

CORAM: Hon'ble Mr. Justice Dr.Bharat Bhushan Parsoon.

Argued by: Mr.Akshya Bhan, Senior Advocate with
Mr.Santosh Kumar, Advocate for the petitioner.

Mr.Jai Kumar Chauhan, Advocate for the respondents.

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Dr.Bharat Bhushan Parsoon, J.

1. Dismissal of application filed by the plaintiff seeking permission to allow fresh expert viz. Navdeep Gupta, Forensic Expert of Patiala, to take the photograph of the disputed signatures of the plaintiff and others from agreement to sell (Ex.DW 10/A and Ex.DW10/B dated 11.03.2005 from the court file, apart from the affidavit and indemnity bond dated 11.03.2005 from the original file of SCO No.132-P, Sector-14, Panchkula from the office of Estate Office, HUDA Panchkula) in getting the same compared with the admitted signatures of the plaintiff and others i.e. from the transfer application of 16.02.2005 and account opening form of Baljit Singh etc, forms genesis of this revision petition.

2. Baljit Singh-petitioner herein has filed a suit for seeking a decree of declaration that transfer of SCO No.132-P, Sector-14, Panchkula, by defendants No.3 and 4 is illegal, null and void and that the same does not affect rights of the plaintiff being result of fraud and thus was liable to be set aside and cancelled.

3. This suit filed on 22.12.2007 is pending adjudication before the court below. When the same has reached the final stage of adducing rebuttal evidence by the plaintiff and for arguments, this application for seeking examination of fresh handwriting and finger print expert was made by the plaintiff.

3A. Lower Court had found the application for adducing of additional evidence to be malafide and had observed that it was filed merely to delay and dilate the decision of this case. Finding it worthy of no merit, the application was dismissed. Impugning this order it is claimed by the plaintiff that examination of the fresh handwriting expert had become necessary because cross-examination DW-11 had been brought into the notice of the plaintiff that disputed signatures of the plaintiff were required to be compared with the admitted signatures.

4. Counsel for the respondent on the other hand urged that knowing it fully well that his case was based on alleged fraud in transfer of SCO No.132-P, Sector-14, Panchkula, the petitioner-plaintiff had already examined one handwriting expert in his affirmative evidence which was volitionally concluded on 29.08.2013 without reserving any right to lead any evidence in rebuttal. Clearly evidence sought to be adduced additionally does not constitute rebuttal evidence of the plaintiff. Merely because some witness of the defendant viz. DW-11 in his cross examination the counsel for the plaintiff has not given answers suitable to the case of the plaintiff, would not make out a case for production of another handwriting and finger print expert particularly when, one such expert has already been examined by the petitioner-plaintiff.

5. Perusal of this application of the petitioner-plaintiff in relation to the impugned order, leaves no manner of doubt that purpose behind filing

this application is clearly oblique and rather is to reopen the entire case. It would be worthwhile to mention that present suit was filed by the plaintiff on 22.12.2007. Issues were framed in this case on 02.06.2008. Plaintiff started leading his evidence wherein he examined his handwriting expert as well. Petitioner-plaintiff obtained 2 reports from him which are dated 16.11.2007 and 15.07.2012. He took more than 5 years to close his evidence on 29.08.2013.

6. It is worth notice that photocopy of agreement to sell as also of receipt both on 11.03.2005, was placed by the defendant No.1 with the written statement. Original agreement to sell and receipt were produced during statement of Rajesh Kumar Dhanda, DW-10. Production of agreement to sell DW10/A of 11.03.2005 and Receipt DW 10/B also of the same date had not brought anything new in the arena.

7. Argument of counsel for the respondents that Baljit Singh PW-1 was duly cross-examined with respect to these two documents on 04.02.2013 and no surprise was sprung on the plaintiff.

8. Even in the written statement, defendant No.3 is clear and categorical about agreement to sell and receipt of 11.03.2005. In short evidence of Rajesh Kumar Dhanda, DW-10 has brought nothing new on the file. In fact, the evidence sought to be produced, notwithstanding two reports of Ms.Jessy Anand, handwriting expert of the plaintiff being already on record, in fact is sought to be produced in rebuttal to evidence of Devender Prasad handwriting and finger print expert DW-7. Two reports of the expert of the petitioner/plaintiff being have already there, this would be third one sought from a second expert by the plaintiff. This process cannot be allowed since there is no ground made out for examining second expert by the plaintiff.

9. The impugned order is not only well-written but is elaborate wherein discussion of facts as also attending circumstances with law applicable, has effectively been made.

10. Keeping in view the facts and circumstances discussed above, affirming the impugned order dated 05.03.2014 (Annexure P-5) of the lower Court, this revision petition, being devoid of any merit, is dismissed.

11. Since the case has become very old, the same be decided within three months, even by taking day to day proceedings, if necessary.

February 21st , 2015
anil

(Dr.Bharat Bhushan Parsoon)
JUDGE