

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.2271 of 2013 (O&M)
Date of Decision: 28.08.2015**

Harish Kumar and others

.....Petitioners

Vs

Bachan Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Kumar, Advocate
for the petitioners.

Mr. S.S. Momi, Advocate
for the respondent.

1. ***Whether Reporters of local papers may be allowed to see the judgment ?***
2. ***To be referred to the Reporters or not ?***
3. ***Whether the judgment should be reported in the Digest?***

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 26.03.2013 passed by Civil Judge (Jr. Divn.), Kurukshetra vide which application for directing the plaintiff to provide his standard thumb impressions before the Court for getting the same compared with disputed thumb impressions on the original record of sub-Registrar on the sale by a document and fingerprint expert has been dismissed.

[2]. Plaintiff/respondent filed a suit for declaration with consequential relief of permanent injunction. Plaintiff has challenged the registered sale deed dated 05.02.1986 on the ground that he never executed the same nor received any sale consideration as

alleged in the sale deed. Sale deed is claimed to be forged and fictitious and not binding upon the right of the plaintiff. Plaintiff denied his thumb impression on the said sale deed. Sale deed has been produced as Ex.P-7 on record in the evidence of the plaintiff and the same has been produced as Ex.D-3 at the instance of the defendants.

[3]. Plaintiff appeared as PW-1 and was also cross-examined by the defendants on 29.07.2011. In cross-examination, plaintiff admitted that he used to sign in Punjabi and he also used to thumb mark. On being asked to provide the samples of his both thumbs and also to thumb mark the statement as PW-1, plaintiff refused to provide his thumb impression. The evidence of the plaintiff was closed. The evidence of defendants started. According to the petitioners, necessity arose to get the standard thumb impressions of the plaintiff compared with that of thumb impressions appearing in the original record of the sale deed in the office of Sub-Registrar. The comparison of such thumb impressions is claimed to be very necessary for just decision of the case.

[4]. Apparently, this revision petition has arisen in a suit for declaration and injunction filed by the plaintiff, seeking sale deed to be declared null and void. The basic ground for seeking declaration qua the sale deed is that he has not signed the said sale deed, nor received any sale consideration. Obviously in view of nature of the suit, onus to prove that the sale deed has not been signed by him is on the plaintiff. Since the issues have not been made available

before the Court, but the nature of litigation pre-supposes that onus to prove a relevant fact is always on a person who asserts in affirmative.

[5]. Since the plaintiff is claiming that he has not executed the sale deed, nor received the sale consideration, therefore, the plaintiff has to prove his case on the aforesaid lines. Plaintiff has already led evidence. The defendant seeks to adduce evidence in respect of issue, the onus of which was on the plaintiff himself. The trial Court while concluding the order has also observed that the case of petitioners is otherwise. It was the duty of the plaintiff to get the sale deed proved and tested by an expert in the context of thumb marking or signature. Petitioner is not supposed to prove negative case for himself.

[6]. At the time of issuance of notice of motion, this Court passed the following order on 05.04.2013:-

*“Learned counsel for the petitioners has placed reliance upon a judgment delivered by this Court in case **Kirpal Singh and another Vs. Vipin Kumar**, 2008 (1) RCR (Civil) 669, wherein it was observed as under:-*

“10. In view of the ratio of the aforesaid judgment and unambiguous language of Section 73, it becomes apparent that directions of the Court are not dependent upon the willingness of the party whose signatures or thumb impressions is sought to be procured for the purpose of comparison by the expert. The Court in appropriate case can issue directions to a party to the lis to give his signatures and / or thumb impressions for

comparison and expert opinion.”

Learned counsel for the petitioners has urged that the Court was not to see the willingness or unwillingness of the plaintiff-respondent at the time of issuing the directions, but such directions were required to be issued, so that the thumb impressions of the plaintiff on the sale deed could be got compared, as he has challenged the said sale deed while claiming that it does not bear his thumb impressions.

Notice of motion for 02.08.2013.

In the meantime, further proceedings before the trial Court shall remain stayed.”

[7]. Apparently in terms of power of the Court to direct the parties to give specimens does not depend upon willingness of the parties concerned. Even if the parties are not willing to give specimens, the Court is still competent to direct such person to give required specimens for comparison. There is no dispute with regard to the proposition, but the fact remains whether in view of present set of circumstances, the application for comparison at the instance of petitioners is maintainable or not?

The basic claim of plaintiff is with regard to his claim against the sale deed itself on the ground that he has not executed the same, nor he has obtained any sale consideration. Onus to prove this aspect is obviously on the plaintiff who has asserted in affirmative in a suit for declaration.

[8]. Even if the prayer for getting the thumb impressions compared at the instance of present petitioners is declined, no prejudice is going to be caused to the defendants as the issue is

primarily relating to plaintiff and in the absence thereof, plaintiff has to face prejudice in his claim.

[9]. In the light of aforesaid facts, it is found that the present revision petition is wholly mis-conceived and the same is thus dismissed.

August 28, 2015

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**(RAJ MOHAN SINGH)
JUDGE**