

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

CR No.3322 of 2013 (O&M)
Date of decision: 20.7.2015

Sant Lal

..... Petitioner

Versus

Mangal Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jai Vir Yadav, Advocate, for the petitioner.

Mr. Sanjay Mittal, Advocate, for respondents No.1 to 4.

Mr. L.M. Gulati, Advocate, for respondent No.5.

RAJESH BINDAL, J

The order passed by the learned court below permitting the plaintiffs to lead additional evidence has been impugned by defendant No.1 before this Court.

Briefly the facts, as are available on record are that a suit was filed by respondents No.1 to 4/plaintiffs for possession by way of specific performance of agreement to sell dated 7.6.2004. It was alleged that the agreement was executed by Gajraj Singh on behalf of Sant Lal. As part of the suit property was sold on 30.6.2005 and release deed was executed for part of the property on 27.7.2005, challenge in the suit was also made to these deeds as well. The suit was filed on 4.8.2005, in which the issues were framed on 10.11.2008. The evidence of the plaintiffs was closed by order of the court on 23.10.2012, despite opportunity having been granted by this Court. The evidence of the defendants was closed on 13.3.2013. It was thereafter that the plaintiffs filed application seeking permission to lead evidence in rebuttal or in the alternative as additional evidence. Learned court below while declining the prayer for rebuttal evidence, allowed the same evidence to be led as additional evidence. The order has been

impugned in the present petition.

Learned counsel for the petitioner submitted that the order of the learned court below while permitting the plaintiffs to lead additional evidence in the form of handwriting and finger print expert and Oath Commissioner, who attested the affidavit Ex.PW1/A, is totally erroneous, as the plaintiffs did not produce any evidence on record to prove the agreement to sell. Crossing the limits the learned court below had even directed the petitioner and other defendants to produce DW2-Rai Singh, DW3-Deen Dayal and DW4-Leela Ram before the court to give their specimens handwritings and the digits of the date for comparison with the questioned documents.

It was submitted that Leela Ram and Din Dayal were witnesses to the agreement to sell, who appeared as witnesses on behalf of the defendants. They were thoroughly cross-examined. Rai Singh was witness on a receipt executed later on and appeared as DW-2. He had earlier appeared as PW1 and filed his affidavit in examination-in-chief (Ex.PW1/A) but did not appear for his cross-examination. When he appeared for the defendants, he was also thoroughly cross-examined by the plaintiffs. He further submitted that DW3 and DW4 while appearing on behalf of the defendants have not denied their signatures on the documents as such. Hence, there is no need to produce any expert witness to prove the same. Even evidence of the Oath Commissioner, who attested the affidavit filed by Rai Singh, when he appeared as a witness on behalf of the plaintiff will also not lead the case of the plaintiff any further, as he never appeared for his cross-examination. Whatever evidence has come on record the learned court below will examine the same and form its opinion. The learned court below rightly came to the conclusion that it was not a case for permitting the plaintiff to lead rebuttal evidence, however, permission was granted to lead additional evidence, which was totally uncalled for. In fact, under the garb of additional evidence, the plaintiffs are trying to fill in the lacuna left in the evidence.

On the other hand, learned counsel for respondents No.1 to 4/plaintiffs submitted that the suit was filed seeking possession by way of specific performance of agreement to sell dated 7.6.2004. Total sale

consideration was ₹ 15,00,000/-. Out of which, a sum of ₹ 8,00,000/- was paid as earnest money. Another ₹ 4,00,000/- were paid on 31.12.2004, for which receipt was duly executed by the vendor. It was witnessed by Rai Singh. The vendor with a view to get out of agreement to sell filed criminal complaint against the witnesses and the deed writer. Under pressure they did not appear as witnesses on behalf of the plaintiffs/vendees, rather appeared for the vendor. The plaintiffs have already produced Jiwan Ram, deed writer as PW4 and Kuldeep, attesting witness as PW6. There were three witnesses to the agreement to sell. One of them has been produced by the plaintiffs. In case the plaintiffs are permitted to lead additional evidence, the defendants will also be entitled to rebut the same. The object is to give fair opportunity to both the parties, so as to find out the truth. By way of additional evidence, the plaintiffs will prove that the dates on the agreement to sell were ante dated. The impugned order does not call for any interference by this Court.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, a suit was filed by respondent No.1/plaintiff for possession by way of specific performance of agreement to sell dated 7.6.2004. It is alleged that there are three witnesses to the agreement to sell, namely, Leela Ram, Din Dayal and Kuldeep. It was scribed by Jiwan Ram. Additional part payment was made after execution of agreement to sell, which was witnessed by Rai Singh. The plaintiffs in their evidence produced Rai Singh as PW1. He filed his affidavit in examination-in-chief as PW1/A. However, he never appeared for his cross-examination. Rather he appeared as a witness on behalf of the defendants. The plaintiffs also produced Jiwan Ram, deed writer as PW4 and Kuldeep one of the attesting witness as PW6. It is not in dispute that the evidence of the plaintiffs was closed by order of the court and thereafter this court having granted them further opportunity, evidence was again closed by order of the court. Meaning thereby, they had ample opportunity to lead evidence. Two of the attesting witnesses, namely, Din Dayal and Leela Ram appeared on behalf of the defendants as DW3 and DW4, respectively. They were thoroughly cross-examined. Even Rai Singh, who appeared as DW2 was also cross-examined by the plaintiffs. In their statements before the learned court

below DW3 and DW4, namely, Din Dayal and Leela Ram had admitted their signatures on the agreement to sell. Even DW2, Rai Singh also admitted his signature on the receipt, though he had explained the circumstances under which it was appended.

The evidence of the plaintiff was closed by order of the court on 23.10.2012. Even the defendants closed their evidence on 13.3.2013. It was thereafter that on 25.4.2013, application seeking permission to lead evidence in rebuttal or in the alternative as additional evidence was filed by the plaintiffs. In a suit filed by the plaintiffs for possession by way of specific performance of agreement to sell initial onus is on the plaintiffs to prove the agreement to sell on the basis of which, they claimed relief. The witnesses now sought to be produced are witnesses to the agreement to sell and to the receipt allegedly executed at the time of part payment after execution of the agreement to sell. They could very well be produced by the plaintiffs at the time of leading their evidence. When they appeared on behalf of defendants, the plaintiffs had ample opportunity to cross-examine them, which in fact, they had availed of. The order passed by the learned court below permitted the plaintiffs to produce these witnesses in additional evidence cannot be sustained.

Accordingly the present petition is allowed. The impugned order dated 8.5.2013 is set aside.

(RAJESH BINDAL)
JUDGE

20.7.2015

sharmila

(Refer to Reporter)