

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

**CR No.3254 of 2014**  
**Date of decision: 27.08.2015**

Jaibir ... Petitioner  
Vs.

Kuldeep and another ... Respondents

**CR No.3270 of 2014**

Jaibir ... Petitioner  
Vs.

Kuldeep and another ... Respondents

**CR No.4398 of 2013**

Jaibir ... Petitioner  
Vs.

Kuldeep and another ... Respondents

**CR No.1963 of 2013**

Jaibir ... Petitioner  
Vs.

Kuldeep and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Present:- Mr. Lokesh Sinhal, Advocate and  
Mr. S.C.Mahna, Advocate  
for the petitioner.

Mr. Adarsh Jain, Advocate  
for respondent No.1.

Mr. Akshay Bhan, Senior Advocate with  
Mr. Santosh Sharma, Advocate  
for respondent No.2.

**AMIT RAWAL J.**

This order of mine shall dispose of four aforementioned civil revision petitions as dispute has arisen out of one suit, whereby, various applications filed by the petitioner-plaintiff, during the pendency of the suit, have been dismissed.

Civil Revision No.4398 of 2013 has arisen out of impugned order dated 03.07.2013 (Annexure P-8), whereby, the application moved at the behest of the plaintiff, under Order 11 Rule 14 CPC, for production the documents, which were stated to be in possession of defendant No.2-Ashok Kumar Sharma has been dismissed. Civil Revision No.3254 of 2014 has arisen out of the impugned order dated 30.04.2014 (Annexure P-10), whereby, the application moved by the petitioner-plaintiff for producing the original Will, General Power of Attorney and other two documents and otherwise permission to lead secondary evidence, has been dismissed.

Other two revision petitions, bearing Nos. 1963 of 2013 and 3270 of 2014 have arisen out of the impugned order, whereby, the application filed by the plaintiff for obtaining the specimen thumb impression and signature of the defendant-Kuldeep Singh has been

directed to give specimen signature and thumb impression by appearing in person in the Court has been dismissed and in another Civil Revision No.3270 of 2014, whereby, the application filed under Order 10 Rule 2 read with Section 151 CPC for seeking indulgence of this Court calling upon Kuldeep Singh-defendant No.1 to appear and suffer a statement by answering the question raised in the application dated 13.03.2013, has been dismissed vide order dated 30.04.2014.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of the petitioner-plaintiff submits that this case has a checkered history. The petitioner-plaintiff filed a civil suit on 09.10.2007 seeking specific performance of the agreement to sell dated 07.11.2003. After framing issues, application at the instance of the Kuldeep Singh for seeking amendment of the written statement to plead that sale deed dated 01.06.1999 by virtue of which he had become owner of the suit land had been set aside, in a suit filed by Ashok Kumar Sharma, which was decreed, vide judgment and decree dated 13.08.2007, thereafter, in pursuance to the aforementioned judgment and decree, the sale deed in favour of Ashok Kumar Sharma has been executed and thus, Kuldeep Singh was no longer owner of the property. Simultaneously, Ashok Kumar Sharma also moved an application dated 27.10.2010, under Order 1 Rule 10 CPC, for impleading him, as a party to the suit, on the ground that he has become owner of the suit land by virtue of the sale deed executed in

pursuance to the aforementioned judgment and decree.

Trial Court, vide order dated 08.08.2011, dismissed both the applications. The aforementioned order was assailed by Kuldeep Singh and Ashok Kumar Sharma, vide CR Nos.4892 and 4896 of 2011 before this Court. This Court, vide order dated 24.09.2012, allowed the revision petitions, aforementioned and defendant No.1- Kuldeep Singh was permitted to file amended written statement and Ashok Kumar Sharma was, accordingly, allowed to be impleaded as defendant No.2, to the suit, subject to payment of costs of ₹10,000/- . The petitioner-plaintiff, thereafter, moved an application for seeking amendment of the plaint by adding paragraph 7-A.

It is the said application which has been dismissed vide impugned order against which civil revision No.7262 of 2012 has been filed.

Mr. Lokesh, Advocate further submits that an order dated 05.10.2010 (Annexure P-2) came to be passed in the application filed by the petitioner, whereby, Kuldeep Singh was called up to give specimen signature and thumb impression. But, thereafter, focus of the trial was diverted on the adjudication of the applications moved by Kuldeep Singh and Ashok Kumar Sharma, for amendment of the written statement, and for impleadment as defendant No.2, respectively, which were dismissed by the trial Court vide order dated 08.08.2011. He further submits that the aforementioned applications were filed on 27.10.2010 and prior to that, directions had already

been issued to defendant No.1. He also submits that the said order was challenged by defendants in CR Nos.4892 and 4896 of 2011 which have been decided by this Court on 24.09.2012. Accordingly, the application dated 15.12.2012, Annexure P-4, moved for compliance of the order dated 05.10.2010, has been dismissed, vide impugned order dated 27.02.2013. He further submits that owing to the dismissal of the aforementioned application, another application dated 13.03.2013, was filed under Order 10 Rule 2 read with Section 151 CPC for calling upon the defendant to clarify the facts, before the parties are called upon to produce the elaborate evidence and 12 questionnaire in this regard were culled out in the said application. Even the said application has also been dismissed vide impugned order dated 30.04.2014.

He further submits that defendant No.2 in paragraph No.4 of the written statement, admitted the possession of the original Will, General Power of Attorney, Affidavit and Security Bond and in essence, the custody and control of aforementioned documents was admitted. However, as preventive measure, that defendant No.2 may not take summersault or does not produce original documents, an application under Sections 65 and 66 of the Indian Evidence Act was filed seeking direction of the Court to permit the plaintiff to lead secondary evidence, inasmuch as, that existence of the documents has not been denied by defendant No.2. He further submits that application, aforementioned has been submitted, simultaneously in

order to prevent the delay in adjudication of the suit. Otherwise, petitioner-plaintiff, would have been blamed, for adopting delaying tactics. He further submits that since defendant No.1 had refused the execution of the agreement to sell dated 7.11.2003, it was essential and necessary to prove his signature, much less, thumb impression by comparing with the admitted signature and vis-a-vis the production of other original documents i.e., Will, Security Bond, Affidavit, General Power of Attorney and secondary evidence is essential to show that defendant No.1 had actually executed the documents.

Mr. Akshay Bhan, learned Senior counsel assisted by Mr. Santosh Sharma, Advocate and Mr. Adarsh Jain, Advocate appearing on behalf of respondents No.2 and 1, respectively, submit that the trial Court had rightly, after noticing all facts and circumstances of the matter, dismissed the application. The defendant No.2 has stated that the documents sought to be produced under Order 11 Rule 14 CPC were not traceable, therefore, the plaintiff can take advantage of these documents in any proceedings and they can be produced "on the case file" as and when traced out and the other application for leading secondary evidence has been declined, on the ground, that the statement had been suffered on behalf of learned counsel for the plaintiff, that Security Bond, General Power of Attorney and Will are in custody of his brother and plaintiff will produce the same as and when the same are available. Thus, no substantial explanation has come forth as to

why the original documents sought have not been produced by his brother, much less, by the plaintiff.

As regards, two other applications moved under Order 10 Rule 2 read with Section 151 CPC for seeking compliance of the order dated 05.10.2010, he submits that the trial Court while dismissing the application has observed that adverse inference can be drawn, in case, vendor-Kuldeep Singh refused to give thumb impression or specimen signature and therefore, there was no need to move an application for putting questionnaire. He further submits that the trial Court while dismissing the application aforementioned, noticed that signature had been admitted by defendant No.1.

In rebuttal, Mr. Lokesh Sinhal submits that the impugned order dated 27.02.2013, (Annexure P-6), passed in CR No.1963 of 2013 suffers from fallacy, much less, infirmity, as actually defendant No.1-Kuldeep Singh has not admitted signature on the agreement to sell. Had it been so, there had been no occasion for moving the aforementioned application for seeking his thumb impression, much less, specimen signature, as admitted facts are not to be proved, much less, they are not at variance.

I have heard learned counsel for the parties and appraised the paper book.

The first and foremost point of consideration to be looked into, keeping in view the aforementioned various facts and circumstances of the case, which have arisen out, during the

pendency of the suit, plaintiff in order to prove his case, has to stand on his own legs and cannot rely on the weak defence of the defendants. Plaintiff instituted the suit for specific performance on 07.11.2003. From the pleading, it is revealed that defendant No.1- Kuldeep Singh, has not admitted the execution of the agreement and in order to prove the same, no doubt, plaintiff would be examining the witnesses of the agreement to sell, much less, scribe or the stamp vendor, but the fact remains, that once the defendants have denied the execution of the agreement, his signature/thumb impression also, there is no other way for the plaintiff, except to seek the assistance of the Court, for appropriate permission calling upon Kuldeep Singh (vendor) to give thumb impression/specimen signature and rightly so trial Court, vide order dated 5.10.2010, passed direction in this regard. No doubt, an adverse inference would be drawn, but the fact remains that defendant No.2, in para No.5 of the written statement, Annexure P-3 (in CR No.4398 of 2013) at page 39 admitted that the documents, Will, General Power of Attorney, Affidavit and Security Bond are in his custody. For the sake of brevity, para No.4 of the written statement, *ibid*, is extracted herein below:-

*"I have given thoughtful consideration to the rival submissions made by the counsel for the parties and perused the record very carefully. This Court has passed the order dated 15.10.2010 directing the defendant No.1 to appear in the Court in order to give the specimen*

*signatures but the defendant No.1 has not appeared to give thumb impression. The learned Court has passed the order to the effect that the defendant (wrongly mentioned as plaintiff) if not appeared to give the thumb impression then an adverse inference shall be drawn against him. This Court, therefore, is of the view that no further direction is required to be given to the defendant No.1 as this Court has already given its finding to the effect that if the defendant not appeared then adverse inference shall be drawn against him. Moreover, the signatures has been admitted by the defendant No.1, therefore, no comparison is required as laid down in the case law mentioned above. With these observations, the present application deserves dismissal. Hence ordered accordingly.”*

Defendant No.2 has suffered a statement while seeking adjudication of the application dated 15.12.2012 (Annexure P-4 in aforementioned petition) that the documents though in his possession are not traceable but shall be produced as and when traced out and rightly so, the plaintiff moved an application under Sections 65 and 66 of the Indian Evidence Act, as well as, questionnaire, in order to shorten the controversy in dispute vis-a-vis execution of the agreement, existence and its loss. Though as per the admission of defendant No.2, the existence of documents, *ibid*,

have not been denied, but at a later stage, defendant No.2 may come out with defence, that the said documents have been lost, so in order to prevent the delay in decision of the suit, an appropriate application under Sections 65 and 66 of the Indian Evidence Act for secondary evidence had been moved. Moving of an application under Sections 65 and 66 of the Indian Evidence Act, particularly Section 66, against defendant No.2, who is stated, to be in possession of the documents and admitted existence, availability, I am of the view that it was essential as it leaves no manner of doubt, rather an irresistible conclusion is drawn, that defendant No.2, is taking all effective measures preventing the Court to examine the aforementioned documents.

It is a matter of record that original agreement to sell and receipt had already been brought, on record of the trial Court. The plaintiff has chosen all possible methods under the statute for effective and proper adjudication of the suit by calling upon defendant to cut short the controversy. Issues are framed where the parties are at variance. The facts which are admitted, are not required to be proved.

Keeping in view the aforementioned discussion, I am of the view that impugned orders dated 30.4.2014 (Annexure P-10), 30.04.2014 (Annexure P-9), 03.07.2013, (Annexure P-8) and 27.02.2013, (Annexure P-6) are not sustainable, as they suffer from illegality and infirmity and are hereby set aside and the present

revision petitions are allowed subject to following directions:-

- i) The trial Court shall ensure the compliance of the order dated 05.10.2010.
- ii) Statement of defendant No.2, vis-a-vis admission and execution of the document aforementioned by defendant No.1 would be of no value, because in case, defendant No.1 is proceeded ex-parte, therefore, he is directed to give his specimen signature/thumb impression as indicated in the order dated 05.10.2010.
- iii) The petitioner-plaintiff is permitted to lead secondary evidence with regard to the documents, Will, General Power of Attorney, Affidavit and Security Bond, as existence of the same has been admitted by defendant No.2. However, since defendant No.2 has not produced the same on the ground that they are not traceable, defendant No.2 is given another opportunity to produce the original of the aforementioned documents and in case of failure to do so, the loss of the same shall be deemed to be presumed and in that eventuality, petitioner-plaintiff would lead secondary evidence of the same and would prove the said documents by way of secondary evidence.

In case, defendant No.1 suffers a statement with regard to the admission of appending his signature/thumb impression on the agreement to sell, then he need not to give his specimen signature/thumb impression.

With the aforementioned directions, revision petitions are allowed.

**(AMIT RAWAL)**  
**JUDGE**

**August 27 , 2015**  
savita