

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

SR. NO.223

CR-810-2014

Decided on: 25.05.2015

BALWINDER SINGH

.....Petitioner

VS

SEET KAUR AND ANR

.....Respondents

CORAM HON'BLE MR. JUSTICE M.M.S.BEDI

Present: Mr.Parveen Kumar Garg, Advocate
for the petitioner.
None for respondent no.1.

M.M.S.BEDI, J

Respondent no.1 was served for 19.03.2015 but none has put in appearance on her behalf. She is proceeded against exparte. Respondent no.2 being proforma respondent is not required to be served.

Vide impugned order, the application filed by the plaintiff/respondent no.1 for additional evidence has been allowed by the trial Court in a suit for possession filed by plaintiff/respondent no.1 against the defendants – petitioner and proforma respondent no.2., challenging the sale deed executed by the plaintiff in favour of defendants.

Counsel for the petitioner has contended that the plaintiff had been given an opportunity to produce handwriting expert but she having not availed the said opportunity cannot be permitted to produce expert evidence at a belated stage of rebuttal. Learned counsel further contended that on earlier occasions, the trial Court had adjourned the case for 03.01.2013 for evidence of the expert besides the remaining evidence of plaintiff/respondent

no.1 but the plaintiff/respondent no.1 failed to produce any expert witness.

I have heard learned counsel for the petitioner and carefully gone through the facts and circumstances of the case.

It appears that the validity of a sale deed dated 20.12.1994 alleged to have been executed in favour of defendants has been challenged by plaintiff-respondent no.1 claiming that the said sale deed will not affect her legal rights. The main controversy which is required to be resolved by the trial Court would be the validity of the sale deed. It is apparent from the arguments of learned counsel for the petitioner that at one stage the trial Court, on application of mind, had formed an opinion that report of the expert regarding thumb impressions of the plaintiff was required for the decision of the case. Irrespective of the fact that the plaintiff lady has failed to avail that remedy, it will not debar her to produce the expert witness to substantiate her claim. The said permission will not only enable the plaintiff/respondent no.1 to make an attempt to prove material on record but at the same time will give a fair opportunity to the trial Court to appreciate the evidence before it to arrive at a conclusion whether the presumption attached to a registered document like a sale deed could be rebutted. The defendant/petitioner would also get an opportunity to rebut the same.

The circumstances of the present case indicate that the Court desires to determine the validity of the registered document with the aid of expert evidence and no ground is made

out to interfere with the discretionary order passed by the Court. No fault can be found in the order passed by the trial Court. However, striking the balance between the parties, for the inconvenience caused to the defendant/petitioner, he can be compensated with costs.

Petition is dismissed. Impugned order is upheld, however, subject to payment of costs of ₹10,000/- to the defendant/petitioner for the unnecessary harassment and delay caused. The costs will be paid to the defendant - petitioner before the expert witness is permitted to be produced and examined to prove the report, further subject to the right of defendant - petitioner to cross examine him to impeach the credibility of the witness and lead rebuttal evidence. Only two effective opportunities will be given to the plaintiff – respondent no.1 within a period of two months from the next date fixed before the trial Court to produce the expert evidence as mentioned here-in-above.

25.05.2015
mamta

(M.M.S.BEDI)
JUDGE