

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

Date of Decision:-06.01.2015

CR No.9 of 2015

Jagdish & Anr.

.....Petitioners.

Versus

Ranbir & Ors.

.....Respondents.

AND

CR No.27 of 2015

Jagdish & Anr.

.....Petitioners.

Versus

Ranbir.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Harkesh Manuja Advocate for the Petitioners.

JASWANT SINGH, J.(ORAL)

Vide this common order I shall dispose of both the
aforementioned Civil Revisions as common facts are involved in the said
cases.

Petitioners are in revision under Article 227 of the Constitution
aggrieved against the order dated 15.12.2014 passed by the learned
Additional Civil Judge(Sr. Divn.), Gohana whereby application filed by the
plaintiff to produce Fingerprint Expert as witness to examine signatures of
DW-1 and DW-2 was allowed.

Two separate suits were filed by the respondent/plaintiff seeking possession by way of specific performance of two different agreement to sell both dated 30.07.2004. The plaintiff has already closed his evidence, wherein he had examined one witness Kartar Singh (PW-2) of the agreement to sell. Defendants/petitioners in their evidence also examined the other two attesting witnesses of the agreement to sell who denied their signatures over the agreement to sell as well as receipt. Thus, the present application was filed by the plaintiff at the stage of rebuttal evidence to examine the signatures of Jai Singh and Dilbagh Singh (DW-1 & DW-2 respectively) who are also the attesting witnesses of the agreement to sell so as to prove that the signatures appended on the agreement to sell Ex.P-1 and receipt Ex.P-2 are theirs. This application was allowed by the learned trial Court vide impugned order dated 15.12.2014 and aggrieved against the same the present revision(s) has been filed by the defendants.

Learned Counsel for the petitioners has argued that the learned trial Court had committed grave illegality by allowing the application of the plaintiff to examine the handwriting and finger print expert at the stage of rebuttal evidence because the plaintiff had simply closed his evidence and had not reserved his right to lead rebuttal evidence, therefore, prayer was made for allowing the present revision petition for setting aside the impugned order.

After hearing learned Counsel for the petitioners and perusing the paper book, this Court is of the considered view that the present petitions are devoid of any merit and same deserves to be dismissed.

No doubt the argument of the learned Counsel for the petitioners seems to be attractive on the first blush. However, on carefully scrutinizing the facts of the case as well as evidence led by the parties, this Court is of the opinion that the learned trial Court to meet the ends of justice had rightly allowed the application of the respondent/plaintiff. Admittedly, there are six attesting witnesses to both the agreement to sell dated 30.07.2004. The plaintiff in order to discharge his onus had examined PW-2 Kartar Singh who had deposed in his favour. However, the defendants in their evidence had examined out of the remaining, two attesting witnesses namely Jai Singh and Dilbagh Singh as DW-1 & DW-2 respectively, who have denied their signatures over the agreement to sell dated 30.07.2004 as

well as receipt of earnest money. Thus, under these circumstances, the plaintiff who was caught unaware of the said deposition of the two attesting witnesses, was justified in moving an application so as to prove the signatures of Jai Singh and Dilbagh Singh. Although it is settled position of law that if plaintiff does not close his evidence by recording in affirmative but instead closes his evidence i.e. does not reserve his right to lead evidence in rebuttal then he cannot be permitted to lead any evidence in rebuttal qua which the onus was on the plaintiff, however, the procedural law is subservient and handmaid of justice and cannot stand in the way to do substantial justice. Therefore, in exceptional cases, where the plaintiff is not negligence in leading his evidence in affirmative, can be permitted to lead evidence in rebuttal qua evidence, which otherwise cannot possibly be anticipated, so as to meet the ends of justice. In the present case, as is evident from the facts, substantial justice required that plaintiff, whose conduct was neither negligence nor blameworthy, is permitted to examine the signatures of DW-1 and DW-2 namely Jai Singh and Dilbagh Singh respectively in order to negate the evidence led by the defendants. No fault can be found in the orders passed by the learned trial Court as the same are based upon sound reasoning and following the principles of natural justice.

In view of the above, finding no merit in both the aforesaid civil revisions, the same are hereby dismissed.

(JASWANT SINGH)
JUDGE

January 06, 2015
Vinay