

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.101 of 2016

Date of Decision.11.01.2016

Jaswant Singh

.....Petitioner

Vs.

Jagroop Singh and others

.....Respondents

Present: Mr. Rajbir Singh, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The plaintiff who filed the suit for specific performance was resisted in his action by the defendants that it was forged and fabricated document. After the plaintiff's side was closed, the defendants had examined an expert to show that the document had not been executed by the executant. The contention is that when the defendants have sought to prove the document as being forged and fabricated, the plaintiff must have a right of rebuttal to show that it was not forged and fabricated.

2. The understanding of law is wholly wrong. When the defendants state that it is forged and fabricated, there is no burden on the defendants to bring that it is forged and fabricated. The moment the plea of forgery is brought, the plaintiff must take a lesson that this document which he is seeking for enforcement is put to test and that the burden is only on the plaintiff to establish the genuineness. An

affirmative evidence must be given by the plaintiff himself that the document is genuine and if he so thought, he should have also examined the expert to prove the genuineness of the document. There is no right to rebut a statement given by the defendant that the document is not genuine when he has examined an expert. The counsel refers to me a judgment of this Court in Surjit Singh and others Vs. Jagtar Singh and others 2007(1) RCR (Civil) 537 as giving him a right to make such an intervention. The Court was examining whether the plaintiff will have a right of rebuttal under Order 18 Rule 3 CPC on the issues for which the burden of proof was on that party. The Court was saying it did not. In this case that is precisely the issue. If the burden of proof was on the plaintiff, he had no business to say that he has a right to lead rebuttal evidence. The reliance on this judgment will be in a situation where the burden of proof was on the defendant. The wrong understanding of law which has resulted in this revision petition and the application was that if the defendants were pleading a case of forgery, the burden of proof was on the defendants. The burden did not ever exist on the defendants.

3. Yet another judgment in Pawan Kumar Vs. Surinder Pal and another 2010(8) RCR (Civil) 1958 relied on by the counsel was with reference to an agreement of sale. The plaintiff proved on record an agreement of sale and the Court was holding that the cause of action to lead evidence of rebuttal would arise only if the defendants lead any evidence in affirmative on an issue, onus of which is on them. The Court was again considering the situation of the defendants who had been compelled to give evidence, burden of which was on the

defendants. I must reiterate that in this case, there was no burden on the defendants to prove that the document was forgery. Yet another judgment is in *Pawan Kumar and another Vs. Vijay Kumar and others 2011(2) CivCC 255* where the agreement to sell was denied by the defendant. In such a case, the plaintiff was not allowed to lead evidence in rebuttal. One attesting witness to the agreement produced by the defendants stated on oath that the agreement to sell did not contain the signature. The Court was holding there in such a circumstance it became necessary for the plaintiff to contradict the statement of attesting witness by way of producing handwriting expert. If the Court was holding that the attestor who complained that his own signature was not true and was brought at the time of trial when the plaintiff had no reason to suspect that the defendant's witness was going to deny his own signature. It was fair enough that the plaintiff was given an opportunity to rebut what the defendant was bringing through an evidence for the first time. The signature of an attestor which was denied by such attestor at the time of the defendant's evidence is not the same thing as denial of execution by the executant or his representative as a defendant, when the burden is always on the plaintiff. The denial of the signature of the executant makes all the difference, for it would amount to denial of the document, which is when the burden of proof will be placed only on the plaintiff. This judgment in *Pawan Kumar's case* (supra) must be confined to its own particular facts and cannot be confused with a situation where the burden was squarely on the plaintiff. The judgment in *Pawan Kumar's case* (supra) is not therefore applicable to this case. In *Kulwant Singh*

Vs. Chand Singh etc. 2015(3) PLR 129 the Court was considering the need for examination of handwriting expert whose report had already been on file. The Court was considering an opportunity to be given to a person when the report was already on file and the case had been closed without affording an opportunity to the party to vouch for the correctness of the report by examination of the handwriting expert. Such a situation does not confront us in this case.

4. There is no merit in the revision petition. The revision petition is dismissed.

(K. KANNAN)
JUDGE

January 11, 2016
Pankaj*