

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

C.R. No.1650 of 2016

Date of Decision.03.03.2016

Jaswant Singh

.....Petitioner

Vs.

Jagjit Singh

.....Respondent

Present: Mr. Arun Kaudal, 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?

-.-

K. KANNAN J. (ORAL)

1. The revision petition is against the order allowing for evidence to be given by the plaintiff at the stage of rebuttal. In a suit for specific performance of enforcement of agreement to sell, the defence was that the agreement is forged and fabricated and the signatures obtained on blank papers have been filled up with false recitals. There was an issue placing the burden of proof on the proof and genuineness of the Will and subsequently on contention taken by the defendant that the additional issues have to be framed with reference to readiness and willingness and forged character of the instrument, the Court below appears to have framed additional issues also, placing the burden of proof on the defendant and observing at the same time that the additional issues do not require any further evidence.

2. The plaintiff has examined himself and one witness originally and has closed his evidence in the year 2015 that he will not offer any more evidence. The defendant has produced evidence and also

examined an expert to state that one of the signatures found in the agreement as that of a marginal witness was not of such witness. After the defendant's evidence was closed, the plaintiff has brought evidence with reference to a particular signature of the marginal witness to say that it was his and seeks to examine his expert. He also wanted a document from the bank to be produced by summoning an officer from the bank. The Court has declined the request of the plaintiff to summon some document from the bank but has allowed for examination of the expert on an observation that the defendant has given some evidence with reference to the signature of the marginal witness and therefore, the plaintiff must also have an opportunity to give appropriate evidence.

3. The counsel for the petitioner relies on some judgments of this Court in Mam Raj Vs. Smt. Raghbiri and others 2014(4) ICC 566; Ram Kumar Vs. Raj Kumar and others 2014(2) PLR 536; M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal Vs. Ajmer Singh and another 2014(4) Law Herald 3627 and Mohinder Singh Vs. Balbir Singh and others 2011(2) PLR 390. If the case was proceeded for rebuttal evidence, the plaintiff cannot have the benefit of evidence which was required to give it in the affirmative. I have no difficulty in accepting such a proposition but, in the ultimate bargain, if the lower Court decides to exercise its discretion and allow for evidence to be given with reference to signature of witness found in the agreement and allows also the benefit of an expert's evidence, I would take it that nothing serious or substantial can be said to have resulted that could cause prejudice to the defendant. It is all too well known that evidence of expert is always very fragile and if the parties believe that such

evidence bring strength to the contentions, it should be left to the parties' own perception of what is relevant. The Court will not be able to dictate what evidence is sufficient so long as such evidence is relevant. In a case where the Court has framed an issue relating to forged character of the document and placed whether correctly or wrongly burden of proof on the defendant to that extent, the plaintiff certainly is entitled to bring rebuttal evidence. If in any event, the issue cast itself is wrong as I have observed prima facie that a plea in defence of forgery cannot cast a burden on the defendant for it only would mean that the original document is denied and that the plaintiff would always have to take the burden of proving the genuineness, the evidence which is now permitted to be given through an expert will be given as an additional evidence and if the defendant still wants to give any more evidence with reference to such evidence otherwise through any expert, he will be entitled to do so.

4. With these observations, the revision petition is dismissed.

(K. KANNAN)
JUDGE

March 03, 2016
Pankaj*