

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.1764 of 2016

Date of Decision: 29.3.2016

Kashmir Singh

---Petitioner

versus

Darbara Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Harpreet Singh, Advocate
for the petitioner**

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

Rekha Mittal, J.

The present petition has been directed against order dated 3.2.2016 (Annexure P-7) passed by the Civil Judge (Junior Division), Jalalabad, dismissing the application (Annexure P-5) filed by the petitioner for permission to examine a finger prints expert in evidence by way of rebuttal.

Counsel for the petitioner would urge that the petitioner has filed a suit for declaration assailing sale deed dated 9.6.1972 purported to be executed by the plaintiff vide Wasika No. 1236 in favour of Shubeg Singh son of Kashmir Singh on the premise that the said sale deed is illegal, null and void, without consideration and is the result of fraud, impersonation and deep rooted controversy hatched by Shubeg Singh,

attesting witnesses and scribe. It is further argued that a serious prejudice would be caused to the petitioner in case he is not permitted to examine an expert witness to prove the factum that the sale deed in question does not bear signatures of the petitioner. He has relied upon judgment of this Court **Jaswinder Singh vs. Rajwant Kaur and others 2014(2) Law Herald 1138** to contend that such an evidence can be allowed to be adduced by way of rebuttal.

I have heard counsel for the petitioner, perused the records particularly the order impugned.

The learned trial court on a detailed consideration of the factual controversy, issues framed for determination and the provisions relevant in the context particularly issue No. 1 framed to the effect 'whether the plaintiff is entitled to declaration as prayed for?', the onus whereof was placed upon the plaintiff has negated claim of the petitioner. The plaintiff moved an application for directing the defendants to place on record the original sale deed and the same was produced on 9.6.2015. Despite the fact that the plaintiff/petitioner has opened his case to substantiate his contention raised in the plaint and the original sale deed was available on record before he closed his evidence and in absence of any issue the onus whereof has been placed upon the defendant in regard whereof the petitioner has the right to lead evidence in rebuttal, I find myself unable to accept the submissions made by counsel for the petitioner that the petitioner is entitled to examine an expert witness by way of rebuttal to prove an issue, the onus whereof has been placed upon the petitioner himself. The judgment relied upon by the petitioner has got no bearing on the facts of the case in hand

for the reason that in the said case, the onus in regard to proving a sale deed dated 20.5.1996 was placed upon the defendants and the petitioner-plaintiff sought to examine an expert in order to rebut evidence adduced by the defendants-respondents on the said issue.

For the foregoing reasons, finding no merit, the petition is dismissed.

(Rekha Mittal)
Judge

29.3.2016
PARAMJIT