

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.219 of 2013(O&M)

Date of Decision:5.2.2016

Satpal

---Petitioner

vs.

Gurnam Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas Mohan Gupta, Advocate
for the petitioner

Mr. Vijay S.Kajla, Advocate
for the respondents

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 filed under Article 227 of the Constitution of India lays challenge to the order dated 5.1.2013 (Annexure P-5) passed by the Civil Judge (Senior Division), Karnal, dismissing the application dated 22.9.2012 (Annexure P-3) for leading additional evidence.

The petitioner has filed a suit for possession by way of specific performance of the agreement to sell dated 10.8.2006 in respect of

agricultural land measuring 82 kanals 17 marlas. The petitioner filed an application for additional evidence seeking permission to examine an handwriting expert. It is argued that the respondents have admitted execution of the agreement and receipt of Rs. 10,00,000/- towards earnest money but they have denied receipt of additional payment of Rs. 5,00,000/- vide receipt Ex. P1/A. The petitioner earlier filed an application for examination of an expert in rebuttal but the same was disallowed by the trial court. The revision petition preferred by the petitioner against the order passed by the trial court was withdrawn with liberty to file an application for additional evidence. It is argued that as counsel for the petitioner did not advise him to examine an expert at an appropriate stage of the proceedings when he was leading his evidence in affirmative, he may be permitted to examine an expert by way of additional evidence when otherwise, no prejudice would be caused to the respondents as they would be at liberty to adduce evidence by way of rebuttal to the additional evidence. Counsel has also made a half hearted attempt to argue that onus of issue No. 3 framed by the trial court has been laid upon the respondents and the said issue reads as under:-

“Whether the defendants have been paid Rs.5,00,000/- as earnest money?OPD”

It is submitted that as onus of issue No. 3 rests upon the respondents, the petitioner otherwise is entitled to examine an expert by way of rebuttal.

Counsel for the respondents while refuting contentions of the petitioner has submitted that during course of evidence of the petitioner in

affirmative, an application was filed by the petitioner for comparison of thumb impressions of Gurnam Singh and Mohinder Singh (defendants therein). The application was disposed of by the trial court on 26.11.2010 with the observations that the petitioner is at liberty to examine an expert and there is no need of any formal order by the court in this regard. It is argued that the petitioner was well aware that the respondents have denied their signatures on receipt in regard to payment of Rs. 5,00,000/- and he even filed an application seeking permission of the court for comparison of the disputed thumb impressions/signatures from an expert but later for the reasons best known, he did not examine an expert and his evidence was closed by the court. The application filed by the petitioner for examination of an expert by way of rebuttal evidence has already been dismissed by the trial court and the order in this regard has attained finality, therefore, contention of the petitioner that the petitioner is entitled to examine an expert to rebut evidence of the respondents on issue No. 3 merits rejection.

I have heard counsel for the parties, perused the records and find no merit in the petition.

The averments set up in the application for additional evidence are falsified and belied from the earlier application filed by the petitioner seeking permission of the court for comparison of the disputed thumb impressions/signatures. As the petitioner very well knew the plea raised in defence by the respondents and even thought of examining an expert but given up that idea for the reasons best known to him, no such plea of the petitioner can be accepted that he should be permitted to lead additional evidence to examine an expert. As has been rightly argued by counsel for

the respondents, contention of the petitioner that he can be allowed to examine an expert by way of rebuttal evidence on issue No. 3 is misconceived and merits outright rejection. In view of the above, I do not find any error much less illegality in the impugned order as would call for intervention by this Court.

For the forgoing reasons, the petition is dismissed with no order as to costs.

(Rekha Mittal)
Judge

5.2.2016
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