

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2446 of 2015 (O&M)
Date of Decision: 20.10.2016

Raghbir and others

.....Petitioners

Vs

Parkash and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ashish Gupta, Advocate
for the petitioners.

Mr. C.B. Goel, Advocate
for respondent Nos.1 to 5.

Mr. Arjun Atri, Advocate
for respondent Nos.6 to 9.

RAJ MOHAN SINGH, J.

CM Nos.21557-CII of 2016

Prayer made in this application is for bringing on record the legal representatives of deceased petitioner No.1-Raghbir, who died on 17.07.2016.

For the reasons mentioned in the application, the same is allowed. Legal representatives of deceased petitioner No.1-Raghbir as shown in para No.2 of the application are ordered to

be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

Main case

[1]. Petitioners have challenged the order dated 31.03.2015 (Annexure P-5) passed by the Additional Civil Judge, Panipat vide which the application for additional evidence filed by the petitioners was dismissed.

[2]. Brief facts as gathered from the record are that the petitioners filed a suit for declaration and possession with consequential relief of permanent injunction challenging the sale deed of the year 1964 executed by their predecessor namely Giani Ram in favour of the respondent. It was alleged that Giani Ram and Chandgi purchased the suit property in the year 1957. Thereafter defendant Nos.1 to 5 allegedly got the sale deed executed by allegedly impersonating Giani Ram vide registered sale deed No.2273 dated 10.11.1964.

[3]. It was further alleged that the aforesaid sale deed did not bear the thumb impressions of the Giani Ram. The sale of the year 1964 came to be challenged by way of present suit in the year 2009. In the written statement filed by defendant Nos.1 to 5, suit was contested on numerous grounds including the

limitation, maintainability, insufficiency of court fee, non-joinder of necessary parties and *locus* of the plaintiffs. Registered sale deed was executed in favour of Giani Ram and Chandgi vide which they have purchased 71 *Bighas* of land vide registered sale deed dated 14.12.1957.

[4]. It was pleaded that Giani Ram and Chandgi were living separately and were cultivating the land separately on account of their individual cultivation. Giani Ram sold his share in favour of defendant Nos.1 to 5 vide registered sale deed No.2273 dated 10.11.1964 for lawful consideration. Since then, defendant Nos.1 to 5 were put in possession and continued thereafter as owners in possession. Giani Ram remained alive after the sale deed upto the year 1980-81. Giani Ram never challenged the sale deed during his life time, despite the fact that the defendant Nos.1 to 5 were recorded to be in possession since the time of their purchase.

[5]. Plaintiffs filed an application for additional evidence under Section 151 CPC for permission to lead additional evidence i.e. to produce the handwriting expert as the witness of the plaintiffs to compare the thumb impressions of Giani Ram on the alleged sale deed dated 10.11.1964 with his thumb impressions affixed on the sale deed dated 14.12.1957.

[6]. Learned counsel for the petitioners submitted that the sale deed dated 10.11.1964 was executed by impersonating Giani Ram. The sale deed did not carry thumb impressions of Giani Ram. Plaintiff had earlier filed an application to get the thumb impression of Giani Ram compared from Government Finger Print Expert FSL, Madhuban. However the said application was dismissed vide order dated 16.11.2012 with liberty to the plaintiff to summon the private expert to compare the thumb impressions of Giani Ram. Despite the said liberty having been granted to the plaintiffs to lead expert evidence in their affirmative evidence, no opportunity was availed by the plaintiffs to lead private expert evidence in his evidence in affirmation. After closure of the evidence of the defendants, the plaintiffs did not lead any evidence in rebuttal. Learned counsel relied upon **Krishan Kumar Sardana vs. Sita Ram Adlalkha, 2009(4) RCR (Civil) 333.**

[7]. I have heard learned counsel for the parties.

[8]. In view of the position of law as explained by the Division Bench of this Court in **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537 DB;** **Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794** and **Avtar Singh vs. Baldev Singh,**

2015(1) PLR 230 the plaintiff was not entitled to lead expert evidence in rebuttal in respect of an issue the onus of which was on him. In order to by pass the stages of leading evidence, the present application came to be filed by the petitioners under Section 151 CPC to lead additional evidence on the same premise on which evidence in affirmative could have been led by them, in view of liberty granted, when their application for leading evidence of Finger Print Expert, FSL Madhuban was declined.

[9]. In view of **Ram Kumar vs. Raj Kumar and others, 2014(3) CivCC 453**, the hand writing expert cannot be allowed to be examined in rebuttal and even cannot be allowed to be examined by way of additional evidence as this was well within the knowledge of the plaintiff-petitioners at the time when they were leading evidence in affirmative. The party cannot be allowed to fill lacuna by adducing evidence without satisfying the Court that such an evidence is required for effective adjudication of the case.

[10]. The sale deed dated 10.11.1964 is sought to be challenged in a suit filed in the year 2009 alleging impersonation of Giani Ram, particularly when Giani Ram remained alive upto the year 1980-81 and no suit was filed by him during his life

time, even in view of change of position in favour of defendant Nos.1 to 5. The Court is not convinced that such an evidence would be required by it for effective adjudication of the case. Having failed to lead its evidence in affirmative and in rebuttal, the plaintiffs cannot resort to Section 151 CPC for adducing additional evidence in order to fill lacuna, which would be in negation of the settled principles of law. Onus to prove the relevant issues was on the plaintiffs themselves and that witness should have been examined by the plaintiffs in their affirmative evidence after closure of their evidence.

[11]. In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal vs. Ajmer Singh and another, 2014(4) Law Herald 3627** this Court held that the additional evidence cannot be allowed to be led by the plaintiffs when the evidence was within their knowledge at the time of leading evidence in affirmative. Additional evidence to contradict the evidence of the defendants cannot be allowed in such circumstances. This Court could not make out anything to see that the evidence sought to be produced by way of additional evidence would enable the Court to decide the controversy in an effective manner.

[12]. In view of aforesaid, no fault can be attributed to the trial Court in dismissing the application for leading additional

evidence failed by the petitioners. This revision petition is accordingly dismissed.

October 20, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No