

Civil Revision No. 2766 of 2014

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2766 of 2014

Date of Decision: 18.10.2016

Sushma Sharma and others

---Petitioners

vs.

Kusum Kalra and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. G.S.Sidhu, Advocate
for the petitioners
Mr. Puneet Tuli, Advocate
for Mr. Sandeep Suri, Advocate
for respondent No. 2

Rekha Mittal, J.

The present petition has been directed against order dated 19.2.2014 passed by the Additional District Judge, Yamunanagar at Jagadhri whereby application filed by the petitioner under order 41 Rule 27 read with Section 75(E) and Order 26 Rule 10A of the Code of Civil Procedure (in short "CPC") for getting signatures of Ram Kumar on agreement to sell dated 30.1.2008 compared with the alleged signatures on entry No. 1223

dated 20.1.2008 in the Register of Notary Public and examination of Sonu Bansal son of Shri Satish Kumar Bansal, has been dismissed.

A brief backdrop of the present case is that Kusum Kalra-respondent No. 1 filed a suit for possession by way of specific performance of agreement to sell dated 30.1.2008 in respect of double storey house, detailed in head note of the plaint, on the premise that Sh. Ram Kumar, predecessor-in-interest of the petitioners agreed to sell the suit property for a sale consideration of Rs. 14,50,000/- and received Rs. 9,00,000/- as earnest money against receipt but failed to execute the sale deed, thus, committed breach of the agreement. The suit was decreed by the trial court and the judgment and decree passed by the trial court came to be challenged in the first appeal at the behest of Sushma Sharma and others (defendants/JDs). The appeal was filed in April 2012 but the instant application for adducing additional evidence was filed in January 2014 that has been dismissed by the Court of Appeal.

Counsel for the petitioners has submitted that as the petitioners from the very beginning have raised a specific plea that the agreement to sell propounded by the respondent/plaintiff was not executed by Sh. Ram

Kumar Sharma and the same is the result of fraud, coercion and misrepresentation, a serious prejudice is likely to be caused to the petitioners in case the alleged agreement to sell dated 30.1.2008 and register carrying entry at Sr. No. 1223 dated 20.1.2008 are not sent to Forensic Science Laboratory, Madhuban or to any other laboratory for the purpose of comparison of alleged signatures of Sh. Ram Kumar Sharma. It is further argued that no prejudice would be caused to the respondent/plaintiff if such an exercise is undertaken. On the contrary, such a report would facilitate just and effective adjudication of the matter in controversy by the Court of Appeal.

Counsel for the contesting respondent, on the contrary, has supported the impugned order with the submissions that the petitioners availed of services of Sh. Yashpal Chand Jain, Handwriting and Finger Prints Expert, Jind to get the necessary comparison and the said person was examined as a witness before the trial court. It is further submitted that the trial court, on a detailed consideration of the report Ex. DW2/A prepared by Sh. Yashpal has negated plea of the petitioners that the agreement to sell Ex. P1 and receipt Ex. P2 are false and fabricated. It is further argued that

as the petitioners have already availed their remedy to get the documents compared from a private expert, they cannot be allowed to fill up the gap and lacunae in their case by seeking comparison from a Forensic Science Laboratory. The last submission made by counsel is that the application filed by the petitioners, by no stretch of imagination, can be covered within the purview and ambit of Order 41 Rule 27 CPC.

I have heard counsel for the parties, perused the paper book and certified copy of the judgment dated 7.3.2012 passed by the trial court whereby suit of the respondent/plaintiff was decreed against the petitioners.

Before advertng to the submissions made by counsel for the parties, it is appropriate to extract provisions of Rule 27 of Order 41 CPC, relevant in the present context:-

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—
(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.”

Counsel for the petitioners is not in a position to say something as to how the application filed by the petitioners for additional evidence can either be covered under Clause (a) or (aa) or both. As the application filed by the petitioners certainly does not fall within the purview of clause (a) or/ and (aa) of Rule 27 along with the fact that the petitioners have already availed of services of so called handwriting and finger prints expert for the purpose of comparison and the respondent/plaintiff has not examined any expert either in affirmative or by way of rebuttal to the report of the expert

examined by the petitioners, I find myself unable to accept submissions of the petitioners that either the Court of Appeal has committed any error much less illegality in disallowing the application or the petitioners are required to be permitted to adduce additional evidence as prayed for.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

18.10.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No