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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3277-2016 (O&M)

Date of decision : 15.12.2016

Sumitra and another

...Petitioners

Versus

Abdul Khalique and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Surinder Singh, Advocate for
Mr. A.K. Azad, Advocate
for respondent Nos.1 to 14.

AMIT RAWAL, J. (ORAL)

The petitioners-defendants are aggrieved of the impugned order dated 14.03.2016, whereby the application moved by the respondent(s)-plaintiff(s) to examine the thumb-impressions of Abdul Rauf, in a suit for declaration and consequential relief of permanent injunction challenging the sale deed dated 03.04.2007 and as well as the decree dated 23.03.1996, has been allowed.

Mr. Sumit Gupta, learned counsel appearing on behalf of the petitioners-defendants submits that there is no rebuttal issue, yet the Court below allowed the application, in fact, there is a categoric denial of the assertion made in the plaint. The plaintiff was required to lead evidence, in affirmative. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Division Bench judgments of this Court rendered in **“Surjit Singh and others V/s Jagtar Singh and others” 2007**

(1) RCR (Civil) 537, “Jagdev Singh and others V/s Darshan Singh and others” 2007 (1) RCR (Civil) 794 and “Avtar Singh and another V/s Baldev Singh and others” 2015 (1) PLR 230..

Mr. Surinder Singh, Advocate for Mr. A.K. Azad, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that no harm and prejudice would be caused as it will help the Court in adjudication of the *lis* between the parties and rightly so, the application has been allowed, thus, urges this Court affirming the findings under challenge as there is no gross illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no rebuttal issue. There is a categorical denial of the averments in the plaint. It was incumbent upon the plaintiff to lead the evidence, in affirmative. Having failed to do so, in the absence of rebuttal issue, such application is not maintainable in view of the *ratio decidendi* culled out by the Division Bench judgments of this Court cited at bar/noticed above.

For the foregoing reasons, the impugned order under challenge is not sustainable in the eyes of law and the same is hereby set aside and accordingly, the revision petition stands allowed.

15.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**