

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Sr. No.301

CR-3643-2005

Pronounced on : 29th August, 2016

M/s Ram Rattan Hans Raj and others

..... Petitioners

VERSUS

Harbhajan Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE

HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Satinder Khanna, Advocate, for the petitioners.

Mr.Munish Gupta, Advocate, for the respondent.

DEEPAK SIBAL J.

The present petition is at the instance of the petitioners/defendants to assail therein order dated 16.05.2005, passed by the Additional Civil Judge (Senior Division), Jagraon, dismissing their application through which they had prayed for referring the receipt on the pronote, which formed the basis of the suit for recovery filed against them, to the Government Security Press, Nasik (hereinafter referred to as the 'Press') for its opinion with regard to the age of the revenue stamp affixed on the receipt.

2. The facts in brevity, which need to be noticed for adjudicating upon the present petition are that the respondent/plaintiff had filed a suit for recovery on the basis of an pronote allegedly executed by the petitioners/defendants. After the plaintiff's evidence had been closed and

the case was fixed for recording of evidence of the defendants, an application was moved on behalf of the petitioners/defendants seeking to refer the receipt on the pronote for opinion of the Press with regard to the age of the revenue stamp affixed thereupon. The application was considered and rejected through the impugned order on the ground that in their written statement the petitioners/defendants had not questioned the genuineness of the afore-referred receipt/revenue stamp and that while leading its evidence when the respondent/plaintiff had produced the receipt, no objection was raised by the petitioners/defendants with regard to the age of the alleged revenue stamp.

3. On 06.09.2007, the present petition was admitted to be heard alongwith CR-5327-2006-Balbir Singh Vs. Sat Narain which petition had been admitted to be heard by a Division Bench for the reason that the learned Single Judge found conflict on the issue of reference of the matter to the Press with regard to the age of the revenue stamp in the cases of Hari Chand vs. Avtar Singh, 1999(4) RCR (Civil) 123 and Kaur Chand vs. State Bank of Patiala, 1990 Civil Court Cases 665, wherein it had been held that on an application filed by the defendant it was necessary to send to the Press the revenue stamps affixed on the pronote and receipt in question for verification, and on the other hand, in the case of Gurcharan Singh vs. Raj Krishan, 1993 Civil Court Cases 527, wherein it had been held that the sending of the pronote and receipt in question for verification was wholly unnecessary.

4. Learned counsel for the parties have been heard.

5. The application filed by the petitioners/defendants was rejected by the Additional Civil Judge (Senior Division), Jagraon, on the ground that

no plea had been taken by the petitioners/defendants in their written statement to question the receipt. A perusal of the extracts from the written statement, as reproduced in paragraph 1 of the present petition shows that in paragraph 3 of the preliminary objections as also in paragraphs 1 and 3 of the written statement on merits the petitioners/defendants had specifically raised the issue that the receipt on the basis of which the suit had been filed was not duly executed and that it was a forged and fictitious document. Thus, the finding of the trial court that no such plea had been raised by the petitioners/defendants in their written statement, is against the record.

6. The other ground on which the trial court had rejected the application filed by the petitioners/defendants was that when the respondent/plaintiff had, while leading his evidence, produced the document in question, no objection had been raised by the petitioners/defendants. The record reveals that after the plaintiff's evidence was over and the matter was fixed for the defendants to lead their evidence, they moved an application to prove that the documents on the strength of which the suit for recovery had been filed were not duly executed and were forged and fictitious. In order to bring home the stand taken by them in their written statement, they moved the application for referring the receipt on the pronote, particularly the revenue stamps appended thereupon, for the opinion of the Press to the effect as to when those stamps had been made. This application was moved at the stage when they were supposed to lead their evidence and, thus, no fault can be found with regard to the stage of the proceedings when the application was filed.

7. We have gone through the judgments in Hari Chand's case (supra), Kaur Chand's case (supra) and Gurcharan Singh's case (supra).

8. In Hari Chand's case (supra), a learned Single Judge of this Court was of the view that no harm would come to any party to the lis if the age of the stamps affixed on the pronote and receipt which formed the basis of the suit for recovery is determined and that it would be in the interest of justice if such request is allowed even if the matter was at the stage of final arguments. Similar view was taken in Kaur Chand's case (supra).

9. However, in Gurcharan Singh's case (supra), a learned Single Judge of this Court while considering a similar issue, after having seen for himself the pronote and receipt in question, was of the view that since the signatures of the defendant are appended on the revenue stamps itself, it should be left to the handwriting expert to find out whether the signatures thereupon were that of the defendant or not and for that purpose it would be wholly unnecessary to forward the matter to the Press. The relevant portion of the judgment is reproduced as under: -

“I have seen the pronote and the receipt in question and find that the signature of the person, who executed the pronote and the receipt, are appended on the stamp itself. The signatures having been denied by the petitioner, it would be left to the hand-writing expert to find out whether these were of the petitioner or not and for that purpose it would be wholly unnecessary to forward the case to Nasik. Admittedly, the stamps were appended on the pronote and the receipt at the time when the signatures were put on them and in that situation, it would be irrelevant to find out the date of the issue of the stamps....”

10. We are, with respect unable to agree with this view.

11. A party is entitled to prove its case in any permissible manner. To discharge its burden of proving its case it is open to a party to the lis to lead appropriate evidence in the manner it wishes to, of course as per the procedure prescribed by law. If more than one mode is available for doing

so the party is entitled to avail any or all the modes. The court cannot restrict the option. Nor can it compel a party to resort to a particular mode or modes. It is not for the court to opine on which of the modes would be more suitable.

12. In any proceedings including a suit for recovery, in the case of denial with regard to the execution of the pronote or receipt on which revenue stamp(s) are affixed, the date when the stamp was made is a relevant fact and for establishing that the stamp was made after the date on which the disputed document is alleged to have been executed, the party denying the execution of that document is well within its rights to lead evidence by summoning the relevant witness(s) for production of the record and for giving evidence with regard to the date the stamp or stamps were made.

13. In view of the above, the impugned order cannot be sustained.

14. Resultantly, the present petition succeeds. The impugned order is set aside by giving liberty to the petitioners to lead evidence to prove the fact that the stamp on the pronote/receipt was made on a date which is later to the date of the alleged execution of the pronote/receipt.

15. No costs.

[S.J. VAZIFDAR]
CHIEF JUSTICE

29th August, 2016

shamsher

[DEEPAK SIBAL]
JUDGE

Whether reasoned/speaking : Yes / No

Whether reportable : Yes / No