

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

Civil Revision No.6045 of 2016

Date of decision : 25.10.2016

Kuldeep Singh

.....Petitioner

Versus

Jitender and others

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. K.K. Garg, Advocate for petitioner.

Mr. Vikram Punia, Advocate for respondent No.1.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 26.08.2016 passed by the learned Additional Civil Judge (Senior Division), Sonapat vide which the application moved by the petitioner-defendant for examining the handwriting and fingerprint expert has been dismissed.

2. I have heard learned counsel for the parties and have gone through the record of the file carefully.

3. Learned counsel for the petitioner-defendant contended that the respondent-plaintiff has examined the expert witness in the additional evidence. The petitioner-defendant has a right to lead the evidence in rebuttal to the additional evidence of respondent-plaintiff but the

application moved by the petitioner-defendant has been wrongly dismissed by the learned trial Court.

4. On the other hand, learned counsel for the respondent-plaintiff contended that the evidence adduced by the respondent-plaintiff was not in additional evidence, rather the said evidence adduced by the respondent-plaintiff is in the rebuttal evidence. He contended that the respondent-plaintiff has examined the expert witness with respect to writing in the diary Ex.D7. The said diary was not produced by the petitioner-defendant. The same only came on record during his cross-examination and, thereafter, the respondent-plaintiff has examined the expert witness with the permission of the Court in the rebuttal evidence. He further contended that the petitioner-defendant has no right to lead the evidence in rebuttal to the rebuttal evidence of respondent-plaintiff. He relied upon case ***Surjit Singh and others Vs. Jagtar Singh and other 2007(1) RCR (Civil) 537.***

5. I have duly considered the aforesaid contentions.

6. As per the admitted facts, the respondent-plaintiff filed the suit for specific performance against the petitioner-defendant and others on the grounds that petitioner has executed an agreement to sell dated 09.09.2009 for the sale of his land measuring 250 square yards in favour of plaintiff for a sum of Rs.30,00,000/-. The petitioner-defendant contested the suit on the ground that it was a loan transaction which has already been repaid and the endorsement to this effect has been made in his diary. The said diary has been produced during the cross-examination of the petitioner-defendant when he stepped into the witness box as DW1. Prior to that the

respondent-plaintiff has already closed his evidence.

7. On the basis of the pleadings of the parties, the following issues were framed in this case:-

1. Whether the plaintiff is entitled for decree for specific performance of agreement dated 09.09.2009 as prayed for? OPP
2. Whether the plaintiff is entitled for decree for permanent injunction on the ground as mentioned in the plaint? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD
6. Relief.

8. The aforesaid issues shows that the burden to prove as to whether the plaintiff was entitled for a decree for specific performance of agreement to sell dated 09.09.2009 was upon the respondent-plaintiff. The plea set up by the petitioner-defendant that it was a loan transaction and some endorsement was made in his diary Ex.D7 was only his defence plea.

9. It is evident from the impugned order that the respondent-plaintiff had already closed his affirmative evidence when the diary Ex.D7 was brought on record in the cross-examination of the petitioner-defendant. Thereafter, the respondent-plaintiff moved an application to examine the expert witness with respect to the said signed endorsement in the diary Ex.D7 and the said application was allowed by the trial Court vide order dated 06.08.2015. Thereafter, the respondent-plaintiff has examined the expert witness, so virtually the said evidence adduced by the petitioner shall

be his additional evidence and not the evidence in rebuttal. It is settled principle of law that the evidence in rebuttal can be adduced by the plaintiff only on those issue the burden to prove of which is on the defendant. Admittedly, the said evidence was not led by the respondent-plaintiff on any issue, the burden to prove of which was on the petitioner-defendant, rather he has led the evidence which will fall within the purview of issue No.1, the burden of prove of which was on the respondent-plaintiff. So, the said evidence adduced by the respondent-plaintiff shall be considered to be the additional evidence. Once the plaintiff has adduced the additional evidence, the petitioner-defendant has a right to lead the evidence in rebuttal to the said additional evidence. So, the learned trial Court has wrongly declined the request of the petitioner-defendant.

10. Thus, keeping in view my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 26.08.2016 is hereby set aside. The application filed by the petitioner-defendant stands allowed. However, the petitioner-defendant will be allowed only one opportunity to examine the handwriting and finger print expert along with his report at his own responsibility on the date to be fixed by the learned trial Court.

25.10.2016*sunil yadav***(DARSHAN SINGH)
JUDGE****Whether speaking/reasoned : Yes / No****Whether reportable : Yes / No**