

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7748 of 2016(O&M)

Date of Decision:02.12.2016

Satnam Singh

.....Petitioner

Versus

Jagdeep Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amit Arora, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

CM No.24374-CII of 2016

For the reasons mentioned in the application, the same
is allowed.

Order dated 01.12.2014 passed by Additional Civil
Judge (Senior Division), Khadur Sahib (Annexure P8) is taken
on record.

Main case

[1]. Petitioner has challenged order dated 01.10.2016
passed by Additional Civil Judge (Senior Division), Khadur
Sahib vide which an application filed by the plaintiff-petitioner for
comparing the signatures of deceased Jagroop Singh on the
alleged sale deed dated 26.06.2006 by way of examining
handwriting and fingerprints expert as an additional evidence

was dismissed.

[2]. Petitioner filed a civil suit for declaration to the effect that the sale deed dated 26.06.2006 allegedly executed by Jagroop Singh was illegal, null and void and without consideration. Jagroop Singh died widowless and issueless and there was no occasion for him to execute the alleged sale deed. Relief for joint possession was also sought by the plaintiff being legal heir of Jagroop Singh as Jagroop Singh, plaintiff-Satnam Singh, Sulakhan Singh and defendant No.3-Balwinder Kaur, were sons and daughter of Geja Singh son of Chanan Singh. Permanent injunction as a consequential relief was also sought, restraining defendant No.1 to alienate the suit property.

[3]. Defendants No.1 and 2 contested the suit by filing joint written statement. Jagroop Singh was claimed to be of sound disposing mind at the time of execution of sale deed in respect of 3 kanals, 2 marlas of land on 26.06.2006 for lawful consideration of Rs.1,12,000/- in favour of defendant No.1. Possession of the land was duly delivered to defendant No.1 and since then, defendant No.1 was in peaceful cultivating possession of the suit land.

[4]. Issues were framed. Issue No.1 was to the effect:-

“Whether the plaintiff is entitled to get relief of declaration as prayed in the headnote of the

plaint? OPP”

After framing of issues, the plaintiff led evidence to discharge the onus under issue No.1 that the alleged sale deed did not bear the signatures of deceased Jagroop Singh. For proving that fact, the plaintiff summoned the record of policy No.470082021 dated 28.10.2002 and policy No.471058047 dated 28.08.1995 of Life Insurance Corporation for the purposes of comparing signatures of deceased Jagroop Singh on the alleged sale deed. Officer of the Insurance Company came, but stated that the record pertaining to the policy of deceased Jagroop Singh had been lost due to shifting of the office. Thereafter, the plaintiff summoned pension record of Gian Kaur widow of Gurmej Singh from the pension branch office of Sub Divisional Magistrate, Khadur Sahib along with the attested affidavit of deceased Jagroop Singh son of Gurmej Singh attached with the pension record. Clerk from the concerned office appeared and brought the summoned record of pension of Gian Kaur along ex-gratia grant file, but the witness stated that the affidavit of deceased Jagroop Singh was missing from the record. Evidence of the plaintiff was closed, Thereafter, defendants also led their evidence.

[5]. Onus of issue No.1 was on the plaintiff. Plaintiff did not lead any relevant evidence to discharge onus of issue No.1, nor

reserved his right to lead evidence in rebuttal. Thereafter, petitioner filed an application to lead additional evidence by way of examining handwriting and fingerprints expert on the ground that the plaintiff succeeded in finding the signatures of deceased Jagroop Singh as Jagroop Singh had studied upto Matric class and Sh. Surjit Singh, Principal of the Government High School, Lalpura had issued a certificate dated 22.08.2016 to the effect that Jagroop Singh had passed Matric from Punjab School Education Board held in March, 1991 bearing roll No.504322. After passing the exam, deceased Jagroop Singh had put his signature in the school record. The additional evidence was sought to be led for the purposes of examining handwriting expert for comparing the signature of the sale deed with that of in school record.

[6]. Evidently, the plaintiff had already closed his evidence in affirmative on an issue, the onus of which was on him. No right was reserved to lead the evidence in rebuttal. 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 (DB)** and **Avtar Singh Vs. Baldev Singh, 2015(1) PLR 230**, it was held that the party cannot be permitted to lead evidence on the issue for which the burden of proof was on that party. Plaintiff cannot as a

matter of right lead evidence in rebuttal on the issue, the onus of which was on him, even the plaintiff cannot be allowed to lead evidence in rebuttal without reserving the right for doing so while closing the evidence in affirmative. In such an eventuality, his right to lead evidence in rebuttal will be forfeited. While interpreting Order 18 Rule 3 CPC, the Division Bench of this Court in **Jagdev Singh and others Vs. Darshan Singh and others, 2007(1) RCR (Civil) 794** reiterated the aforesaid legal position.

[7]. In **Ram Kumar Vs. Raj Kumar and others, 2014(3) CivCC 453**, it was held that Handwriting Expert cannot be allowed to be examined and even cannot be allowed to be examined by way of additional evidence as the fact was well within the knowledge of the plaintiff at the time of leading evidence in affirmative.

[8]. Specific issue was framed and the plaintiff could not discharge the onus by leading affirmative evidence. The plaintiff had knowledge of the stand taken by him from very inception. Having failed to lead evidence in affirmative and in rebuttal, provision in terms of Order 18 Rule 17-A CPC cannot be resorted to in order to fill lacuna.

[9]. In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal Vs. Ajmer Singh and another, 2014(4) Law Herald**

3627, the aforesaid view was reiterated by this Court. Satisfaction could not be made with regard to the fact that the evidence in question was not within the knowledge of the plaintiff at the time of leading evidence in affirmative. The discretion under inherent powers of the Court cannot be exercised in the given situation.

[10]. In view of aforesaid, I do not subscribe the arguments raised by learned counsel for the petitioner. This revision petition is accordingly dismissed.

02.12.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No