

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7749 of 2016

Date of Decision: 28.11.2016

Ajmer Singh

.....Petitioner

Versus

Gurmit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.L. Singla, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 07.09.2016 passed by Additional Civil Judge (Senior Division), Phillaur vide which the application filed by the petitioner for directing the respondent No.3 Manjit Kaur wife of Gurmit Singh to give her standard thumb impressions as well as her standard signatures in Punjabi Script for comparison with the thumb impressions and signatures on the written agreements dated 17.06.2006 and 19.06.2006 by expert was declined.

[2]. Plaintiff-petitioner filed a suit for recovery of Rs.25,00,000/- as compensation and damages for breach of agreements along with consequential relief of permanent injunction.

[3]. After completion of pleadings and at the stage of

evidence, an application was moved by the plaintiff for directing defendant No.3-Manjit Kaur to give her thumb impressions and signatures in Punjabi Script for comparison of the same with the thumb impression and signatures appended by her on the agreements dated 17.06.2006 and 19.06.2006.

[4]. Defendants have already denied the execution of aforesaid agreements. Defendant No.3-Manjit Kaur has even denied her signatures and thumb impressions on the aforesaid agreements.

[5]. The application was contested by the defendants. The suit was filed by the plaintiffs on the basis of aforesaid agreements. In the written statement filed by the defendants, execution of alleged agreements was denied. Thereafter, plaintiff led evidence in affirmative and closed the same on 18.09.2015. Even thereafter, defendants had led evidence and closed the same. Now when the case was fixed for rebuttal and arguments, the present application came to be filed.

[6]. I have heard learned counsel for the petitioner.

[7]. Evidently, the suit was filed on 03.02.2012. The written statement was filed by the defendants on 21.04.2012. The evidence of the plaintiff was closed on 18.09.2015 and after closing the evidence of the defendants, the case was fixed for rebuttal and arguments. At the time of closing evidence in

affirmative, plaintiff did not reserve his right to lead evidence in rebuttal. Evidently, the onus to prove the agreements dated 17.06.2006 and 19.06.2006 to be illegal, null and void was on the plaintiff. Relevant issues were also framed.

[8]. It is a settled principle of law that the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself. No right was reserved to lead the evidence in rebuttal. The plaintiff cannot be allowed to lead evidence in rebuttal in order to discharge onus of issue, which he or she could have discharged while leading evidence in affirmative. No expert witness can be allowed at this stage.

[9]. 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.

[10]. 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 in the knowledge of the plaintiff at the time of leading evidence in affirmative.

[11]. The plaintiff had knowledge of the stand taken by the plaintiff 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.

[12]. In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal Vs. Ajmer Singh and another, 2014(4) Law Herald 3627**, the aforesaid view was reiterated. 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.

[13]. In view of above mentioned precedents, this Court does not feel to interfere in the impugned order dated 07.09.2016 passed by Additional Civil Judge (Senior Division), Phillaur.

There is no error of jurisdiction in the impugned order, nor the same is found to have suffered with any perversity. This revision petition is accordingly dismissed.

28.11.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No