

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

-.-

Civil Revision 7948 of 2016
Date of decision: 19.12.2016

Joginder Ram

..... *Appellant*

Versus

Ajit Singh and others

..... *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Amandeep Singh Manaise, Advocate
for the petitioner

-.-

Rekha Mittal, J.

The present petition directs challenge against order dated 06.05.2016 (Annexure P5) passed by the Civil Judge (Junior Division), Gurdaspur whereby application of the petitioner filed under Section 151 of Code of Civil Procedure (in short 'CPC') seeking comparison of thumb impression of the petitioner on alleged sale deed Ex. D1 has been dismissed.

Counsel for the petitioner has submitted that the petitioner has filed a suit for declaration that he is owner in possession of land measuring 7 kanals 12 marlas, detailed in head note of the plaint and the sale deed dated 28.11.1980 purported to be executed by him in favour of Teju Ram, father of the defendants is illegal, null and void, forged, fabricated and is a result of fraud and impersonation.

The petitioner has already adduced his evidence and thereafter the respondents/defendants examined certain witnesses and also produced original sale deed dated 28.11.1980 marked as Ex D-1. It is argued that the

petitioner/plaintiff wants to get his alleged thumb impressions on the sale deed compared with his sample thumb impressions to be obtained before the Court and report of the expert would be a clincher for just decision of the case. It is further submitted that a serious prejudice would be caused to the petitioner in case he is not permitted to seek necessary comparison of thumb impressions

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

On November 28, 2016, order passed passed by this Court reads as follows:

“Counsel for the petitioner prays for time to seek instructions if the petitioner reserved his right to lead evidence in rebuttal qua the issues, the onus whereof has been placed upon the respondents/defendants and further the evidence sought to be adduced now can be said to be evidence in rebuttal qua the issues of which the onus was upon the respondents/defendants.

Adjourned to 15.12.2016.”

Counsel for the petitioner has fairly informed that while closing evidence in affirmative, the petitioner did not reserve his right to lead evidence in rebuttal. The petitioner has reproduced the issues framed by the trial Court in para 5 of grounds of revision and perusal thereof would evident that onus of the material issues 1 to 4 has been placed upon the petitioner. Once the petitioner has raised a plea that sale deed dated 28.11.1980 purported to be executed by him in favour of Teju Ram, father of the defendants is the result of forgery, fabrication, fraud and impersonation, he was required to adduce evidence in affirmative to

substantiate his claim in this regard. The fact that the original sale deed was not available with the petitioner at the relevant time would not create a right in his favour to lead evidence in rebuttal as the petitioner was well within his right to call upon the defendants to produce the original sale deed on record. This apart, the petitioner has filed an application for allowing him comparison of his thumb impression on Ex. D-1 at point A without seeking any permission from the Court to adduce additional evidence or evidence in rebuttal.

Keeping in view the discussion made hereinabove, no error much less illegality can be noticed in the order impugned, warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

19.12.2016
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No