

229.

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

Civil Revision No.8121 of 2014 (O&M)

Date of decision:07.01.2016

Mihan Singh

... Petitioner

versus

Darshan Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rakesh Gupta, Advocate,
for the petitioner.

Mr. Vijay Sharma, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The revision petition is against the dismissal of an application filed for production of additional evidence through a witness. It is a suit for specific performance of an agreement of sale alleged to have been executed by the defendant. The defendant has taken a plea that there had been some borrowings from the plaintiff and he never agreed to execute the sale deed. The plaintiff appears to have confronted the defendant with the suggestion at the time of trial in cross-examination that the defendant accompanied the plaintiff to

the revenue office to secure the details of jamabandi and handed it over to the plaintiff on a day prior to the alleged agreement. The defendant has denied the suggestion in the cross-examination. After the conclusion of oral evidence on both sides, the plaintiff has sought for production of evidence, purported to be in rebuttal, of the revenue official who obliged the parties with giving the copies of jamabandi. The attempt is to make probable an inference that the defendant had volunteered information about the properties agreed to be sold and it was not a money transaction as contended by the defendant and that the defendant could not have merely signed up the blank papers without knowing that he was entering into an agreement of sale as contended by him.

2. In the manner in which the pleadings have been brought before court and evidence given, there can be no doubt that the plaintiff was required to prove the genuineness of the agreement which he was propounding and take upon himself the burden of proving the documents for its enforcement.

3. It appears that an issue has been framed to consider a plea whether the agreement is a forgery and placed the burden on the defendant. The issue is wrongly cast. If there is a plea of forgery, the burden is on the opposite side to prove that the document is genuine. Issue No.3 is ordered to be deleted.

4. A plea by the defendant that it was a money transaction was required to be quelled by the character of evidence about the genuineness of the transaction of agreement of sale. There was, in the first place, no scope for rebuttal evidence.

5. If the plea for rebuttal were to be construed a plea for additional evidence, there again, the plaintiff must have surely known by the nature of defence that was taken that he should have placed every positive evidence that he could offer that the defendant was actually contracting to sell the property and that he had even given the revenue details of description of the property. This must have been again stated in affirmative before the plaintiff had closed his side. The suggestion in the cross examination which he denied cannot be a ground for giving the additional evidence as it is now sought to be done.

6. There is, however, another side to the story as to how the trial could normally be conducted. Success in the cross examination invariably depends on certain surprises on the adversary by keeping close to his chest and not reveal. It is likely that the plaintiff reserved an important circumstance of the defendant allegedly accompanying the plaintiff to the revenue office for collection of details of jamabandi to be confronted in the cross examination and obtain favourable answer. If the defendant had accepted the suggestion, perhaps the matter would have ended there. Because he

has denied, the plaintiff is now trying to prove the suggestion put to a witness. I do not want to shut the course of trial and an opportunity to the plaintiff if he seeks such additional evidence but this cannot be without appropriately imposing costs for the indiscretion that the plaintiff allowed to himself and the unnecessary impediment in the smooth progress of trial that he has caused. The plaintiff will have the benefit of additional evidence on payment of costs of ₹25,000/- to the defendant within a period of 4 weeks. Since it is really in the nature of affirmative evidence, the defendant shall be at liberty to give contra evidence if he so chooses to do. If the amount is not paid as directed, the order passed by the court below already will stand confirmed.

7. The impugned order is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

07.01.2016
sanjeev