

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

**Civil Revision No.1703 of 2016
Date of Decision: 04.10.2017**

Pritam Singh through LRs Jeet Kaur and others

.....Petitioners

Vs

Kewal Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Namit Gautam, Advocate
for the petitioners.

Mr. Harit Sharma, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 08.02.2016 passed by the Addl. Civil Judge (Sr. Divn.) Nakodar whereby application filed by the petitioners in the capacity of legal representatives of deceased Pritam Singh (original defendant No.1) for granting permission to handwriting expert to draw photographs from the court file and prepare his report before appearing as witness for the defendants was dismissed.

[2]. Brief facts are that plaintiff-Kewal Singh filed a suit for possession by way of specific performance of agreement to sell dated 24.04.2009 executed by Pritam Singh defendant No.1.

Plaintiff claimed that vide the aforesaid agreement to sell dated 24.04.2009, Pritam Singh agreed to sell 8 *Kanals* 0 *Marla* of land being 160/2949th share of total land measuring 147 *Kanals* 9 *Marlas* as shown by *khasra* numbers mentioned in the plaint. The earnest money to the tune of Rs.10 Lakhs was paid at the time of execution of agreement to sell and the remaining sale consideration of Rs.8 Lakhs was to be paid at the time of execution of sale deed. Plaintiff also prayed for alternative relief of recovery to the tune of Rs.20 Lakhs.

[3]. Defendant No.1 Pritam Singh filed the written statement. In the preliminary objection No.1, defendant No.1 denied to have executed the agreement to sell dated 24.04.2009 in favour of the plaintiff regarding the suit land. He claimed that no amount was received by him towards any earnest money. He further claimed that the entire family of the defendants are agriculturist by profession. Defendant No.1 and his family took land on lease for cultivation from different persons and for that purpose the family oftenly gave security/guarantee of the possession delivered to the family as required by the persons giving their land to them and thereafter on the expiry of the lease period such security/guarantee given by them were returned to the family. As a security of possession delivered to the defendant and his son Harbhajan Singh and his

family in respect of 60 acres of land on lease, the defendant was compelled to sign some blank papers and also by Harbhajan Singh as a guarantee of land taken on lease. All this was done by words of mouth commitment between the parties and it was orally agreed by spoken words that the plaintiff and the defendant after completion of the lease and adjustment of the amount would return the same. Defendant No.1 further pleaded that in para no.1 of the preliminary objection to the following effect:-

“Now plaintiff along with Darshan Singh son of Joginder Singh and Gurbachan Singh son of Gian Singh both of Talwandi Madhoo might have converted forgedly above mentioned blank papers into the alleged agreement to sell in his favour as Neither answering defendant No.1 nor his son Harbhajan Singh ever signed the agreement to sell nor any consideration was ever passed as alleged in the agreement to sell in dispute nor signed by answering defendant No.1. As such no transaction of any consideration was ever passed in favour of answering defendant No.1.”

[4]. Harbhajan Singh legal representative No.2 of the deceased Pritam Singh was arrayed as defendant No.4 in his personal capacity in the suit. Defendant No.1 Pritam Singh during his life time filed the written statement in the context as detailed above. Defendant No.4/petitioner-Harbhajan Singh in his personal capacity failed to put up his appearance before the

trial Court despite service and was proceeded against *ex parte*. Thereafter he filed an application under Order 9 Rule 7 CPC for setting aside the *ex parte* proceedings. The application was allowed subject to payment of cost of Rs.7,000/- imposed upon defendant No.4 Harbhajan Singh in his personal capacity.

[5]. The trial Court noticed the *mala fide* conduct of defendant No.4 in the order dated 07.09.2012. Even after setting aside the *ex parte* proceedings, defendant no.4 Harbhajan Singh did not file the written statement and also did not pay the cost imposed upon him. He rather approached the High Court for clubbing of two different suits i.e. suit pending at Nakodar and another suit pending at Sultanpur Lodhi in one district. The application filed by defendant No.4 was dismissed by the High Court. Defendant No.4 failed to file the written statement, nor paid the amount of cost imposed upon him and, therefore, his defence was ordered to be struck off by the order of the Court dated 04.08.2015. After the death of Pritam Singh, defendant No.4 moved application for impleading legal representatives of deceased/defendant No.1 (Pritam Singh). The said application was dismissed by the trial Court on 04.08.2015 on the ground that the application was filed by Harbhajan Singh alone without any authority. Thereafter Jeet Kaur filed the application for impleading legal representatives of

defendant No.1 Pritam Singh on 31.05.2015 and the same was allowed by the trial Court on 29.09.2015. Legal representatives of deceased defendant No.1 Pritam Singh were ordered to be brought on record including defendant No.4 in the capacity of one of the legal representative of deceased Pritam Singh.

[6]. The conduct of the Harbhajan Singh/defendant No.4 was writ large on the record of the case and thereafter he appeared as DW-1 only under the garb of one of the legal representatives of deceased defendant No.1 Pritam Singh despite the fact that he was in his personal capacity had already acted in defiance to the Court order and his defence was struck off. He filed application for permission to Handwriting Expert Sukhjinder Singh to draw photographs from the Court file in order to get photographs drawn by the Handwriting Expert from the alleged agreement having alleged signature of Pritam Singh and also of admitted signature of Pritam Singh on vakalatnama as well as on the written statement for comparison *inter se*. The said application was filed on 30.01.2016 by Harbhajan Singh by showing himself to be the legal representative of deceased defendant No.1 Pritam Singh. The application was not signed by all the legal representatives, nor Harbhajan Singh disclosed any authority to file the application on behalf of other legal representatives of deceased Pritam Singh. The defence of

Harbhajan Singh has already been struck off and despite non-payment of cost and compliance of the earlier order, he succeeded in getting himself impleaded as legal representative No.2 of the deceased Pritam Singh and thereafter ventured to file the present application.

[7]. Addl. Civil Judge (Sr. Divn.) Nakodar vide order dated 08.02.2016 dismissed the application by highlighting the conduct of Harbhajan Singh as defendant No.4 in his personal capacity. The Court observed that the evidence now sought to be led by Harbhajan Singh in the capacity of one of the legal representative of Pritam Singh is beyond of version of Pritam Singh himself as he did not deny his signature specifically on the agreement except to coin a story of security/guarantee of possession by way of signing on blank papers.

[8]. I have heard learned counsel for the parties.

[9]. The conduct of Harbhajan Singh has already been highlighted on record in his personal capacity as defendant No.4. He did not take any action in the context of denying the signature on the agreement to sell. Having proceeded against *ex parte* and even after striking off his defence, he cannot be permitted to say anything in his personal capacity. After the death of Pritam Singh, Harbhajan Singh devised the present

modus operandi to seek leading of expert evidence by way of moving an application individually in his name without getting the application signed by all the legal representatives of deceased Pritam Singh, nor he has projected a case of obtaining power of attorney on behalf of all the legal representatives of Pritam Singh for filing the application dated 30.01.2016 for the relief in question.

[10]. It is a settled principle of law that if a person has not come to the Court with clean hands, no discretionary or equitable relief can be granted to him. Pritam Singh in his written statement has not denied his signatures specifically, rather he has projected a case of signing the security/guarantee documents in respect of delivery of possession to the family. Even in the absence of specific denial, no such claim can be projected by a person, who has already failed to contest the suit in his individual capacity to project a case in the capacity of one of the legal representative that too in the absence of other legal representatives. The conduct of Harbhajan Singh is such that he does not deserve any discretion much less equitable discretion at the hands of this Court.

[11]. In view of above, I do not find any justification to interfere in the impugned order passed by the trial Court. No error of jurisdiction has been pointed out by learned counsel for

the petitioners in the order passed by the trial Court. This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

October 04, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No