

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254

CR-2248-2016

Date of Decision:28.04.2017

Harjinder Singh

.....Petitioner

Versus

Rajesh Kumar and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Ashish Grover, Advocate,
for the petitioner.

Mr.Vishal Garg, Advocate,
for respondent No.1.

RAMESHWAR SINGH MALIK, J.(Oral)

Present revision petition, at the hands of defendant, filed under Article 227 of the Constitution of India, is directed against the impugned order dated 26.02.2016 passed by the learned trial Court, whereby the application of the petitioner for dis-allowing the plaintiff to examine handwriting expert in his rebuttal evidence, was dismissed by the learned trial Court.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that it was the petitioner-defendant who raised the plea of fraud. It is also not in dispute that the petitioner-defendant did not produce sufficient evidence to prove his plea of fraud. Learned counsel for the petitioner was found justified in

contending that once the petitioner-defendant did not prove his plea of fraud, there was no occasion for the plaintiff-respondent to lead any rebuttal evidence on that aspect of the matter.

During the course of hearing, when the learned counsel for the plaintiff-respondent was confronted with the abovesaid factual as well as legal aspect of the matter to explain as to where was the occasion to lead rebuttal evidence by the plaintiff-respondent, he had no answer and rightly so, it being a matter of record. However, since the learned trial Court has failed to appreciate this material aspect of the matter at the time of passing of the impugned order, the same has been found suffering from patent illegality and cannot be sustained.

It goes without saying that onus to prove would be on the party who asserts. It is not in dispute that it was the petitioner-defendant who asserted that the agreement of mortgage was a forged and fabricated document. However, he did not lead any evidence to prove his pleaded case. In such a situation, onus would again not shift on the plaintiff to prove the plea of fraud raised by the defendant. Under these circumstances, it can be safely concluded that the learned trial Court exceeded its jurisdiction, while passing the impugned order and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 26.02.2016 is hereby set aside. Present revision petition

deserves to be accepted.

Resultantly, with the above-said observations made, instant revision petition stands allowed, however, with no order as to costs.

April 28, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No