

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

**Civil Revision No.2884 of 2014
Date of Decision: 04.10.2017**

Hakim Singh

.....Petitioner

Vs

Ishwari Lal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjay Vij, Advocate
for the petitioner.

Respondent No.1 in person.

Respondent No.2 proceeded against *ex parte*.

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed this revision petition against the order dated 11.03.2014 passed by the Addl. Civil Judge (Sr. Divn.) Gurgaon vide which the application filed by the plaintiff for permission to lead evidence in rebuttal was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for possession by way of specific performance on the basis of agreement to sell. Plaintiff alleged that defendant No.1/respondent No.1 herein was alleged owner in possession of residential plot No.2064 Sector 46, Urban Estate, Gurgaon

measuring 100 sq. yards i.e. 4 *Marlas* on the basis of allotment letter dated 29.05.1996 issued by defendant No.2 for consideration of Rs.1,06,920/-. Defendant No.1 had already paid the entire sale consideration to defendant No.2. Defendant No.2 had already executed a conveyance deed in favour of defendant No.1. Defendant No.1 agreed to sell the above said plot to the plaintiff for a total sale consideration of Rs.6,22,500/- i.e. @ 6225/- per sq. yards. An agreement to sell dated 18.12.2003 was executed after receiving Rs.25,000/- as earnest money from the plaintiff. All the terms and conditions of sale of the plot were settled in the said agreement to sell. Defendant No.1 was in need of more amount, therefore, defendant No.1 received another sum of Rs.75,000/- from the plaintiff on 24.12.2003 as further part payment towards execution of the transaction and he executed a receipt admitting the total receipt of Rs.1 lakhs from the plaintiff. The date for execution of sale deed was fixed as 15.02.2004 as per agreement to sell dated 18.12.2003.

[3]. In pursuance of the aforesaid agreement to sell dated 18.12.2003, defendant No.1 moved an application dated 03.02.2004 to defendant No.2 for transfer of the said plot. Date was given as 21.02.2004 by defendant No.2. Thereafter defendant No.2 permitted the transfer of plot in favour of the

plaintiff vide memo No.5675 dated 19.05.2004 subject to fulfilling certain conditions by defendant No.1. Defendant No.1 did not fulfill the conditions as formulated by defendant No.2 on the ground that the last date as per agreement to sell has already expired. The delay was not attributable to the plaintiff. With this background ultimately the suit came to be filed after pleading subsequent details of facts between the parties.

[4]. After completion of necessary pleadings, the trial Court framed the issue. Issue Nos.1 and 6 were to the following effect:-

- “1. Whether the defendant No.1 entered into agreement to sell dated 18.06.2004 as alleged? OPP
6. Whether the plaintiff has not come to the Court with clean hands? OPD.”

[5]. In the written statement filed by defendant No.1 agreement to sell in question was denied. Evidently, defendant No.1 admitted the execution of agreement to sell dated 18.12.2003, but has denied execution of alleged second agreement dated 18.06.2004 outrightly. Defendant No.1 stated that neither application for seeking permission for transfer was filed by defendant No.1, nor any transfer permission was granted by the HUDA/defendant No.2. After the said agreement

dated 18.06.2004. In para Nos.3, 4 and 8 on merits of written statement, defendant No.1 pleaded in the following manner:-

- “3. Yes, defendant-1 agreed to sell the plot in question to plaintiff on the terms and conditions set out in Agreement dated 18.12.03 (Annexure' R-1) which is no longer alive/exists enforceable as already explained above. As such, para-3/4 of plaint both are helpless for plaintiff.
4. That as per the updated record plaintiff paid Rs.25,000/- as biana and further paid Rs.75,000/- (total Rs. One lac only) and later plaintiff admittedly settled all transactions/ account with the defendant-1 following cancellation of deal/Agreement surrendered. As per agreement the last date 15.02.04 was fixed for balance full and final payment to the defendant-1. All other averments in para-5 of plaint are wrong and denied.
8. The para-9 of plaint is absolutely wrong and denied. The 2nd Agreement (Annexure' R-6) is a product of plaintiff's cleverness that 30 days time limitation in 2nd Agreement as well as 60 days in said Transfer Permission expires on same date i.e. 17/7/04. Further, opinion evidence will prove that signatures (on 2nd Agreement) of defendant-1 are forged. Besides, plaintiff failures explained herein above rendered the same invalid and void-ab-initio. It is always a purchaser comes to seller's shop rather than a shopkeeper goes to purchaser. A defaulter moves first.”

[6]. The application was filed by the plaintiff for permitting

him to lead rebuttal evidence on the ground that while filing the written statement defendant No.1 had denied the execution of second agreement dated 18.06.2004 being forged and fabricated. The second agreement was pleaded to be the foundation of the suit and, therefore, the plaintiff sought leading of rebuttal evidence to counter the evidence of DW-1 Vijay Kumar Rastogi, Handwriting Expert, who was examined by the defendant.

[7]. The application was contested by defendant No.1 on the ground that onus of issue No.1 was on the plaintiff himself. In the event of specific denial to the agreement to sell dated 18.06.2004 by defendant No.1, the plaintiff was required to lead evidence in affirmative to prove the execution of aforesaid agreement. In the absence of leading any evidence in affirmative in respect of an issue, the onus of which was on the plaintiff himself, the plaintiff cannot be allowed to lead evidence in rebuttal.

[8]. Learned counsel for the plaintiff/petitioner submitted that the plaintiff has already led evidence in affirmative to prove the execution of agreement to sell dated 18.06.2004 and since the defendant has led expert evidence in the context of agreement being forged and fabricated, therefore, in order to counter the expert opinion given by DW-1, plaintiff is entitled to

lead the evidence in rebuttal in respect of the evidence which has been led by the defendant in the context of issue No.6.

[9]. Learned counsel also submitted that no doubt the onus of issue No.1 in the context of proving execution of agreement to sell dated 18.06.2004 was on the plaintiff, but the plaintiff has led his evidence as well as evidence of the attesting witnesses to discharge the onus under issue No.1. The plea of the agreement being forged and fabricated could be gathered only from the evidence led by the defendants under issue No.6, therefore, the expert evidence adduced by defendant No.1 under issue No.6 can only be rebutted by the plaintiff by means of leading expert evidence at the stage of rebuttal.

[10]. Learned counsel by relying upon **Ranjit Singh vs. Mehfil Restaurant , 2008(1) RCR (Civil) 768** contended that in respect of an issue, onus whereof was on the defendant, the plaintiff has every right to rebut the same by leading rebuttal evidence in the event of discharging burden by the defendant, even by leading expert evidence in rebuttal.

[11]. Respondent No.1, who appeared in person has opposed the argument of learned counsel for the petitioner on the ground that the plaintiff cannot be allowed to lead evidence of Handwriting Expert in rebuttal in respect of issue No.1, the

onus of which was on the plaintiff himself. Since defendant No.1 has specifically denied the execution of agreement to sell dated 18.06.2004 in the written statement, therefore, plaintiff/petitioner cannot be allowed to say that the expert evidence led by the defendant No.1 was in the context of issue No.6.

[12]. Respondent No.1 by relying upon **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) P&H 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** contended that the plaintiff cannot be allowed to lead evidence in rebuttal in respect of issue No.1 as he had failed to discharge the onus in view of specific denial of defendant No.1 in his written statement. Secondly, the plaintiff has not reserved his right to lead evidence in rebuttal in respect of the issue claimed by him as a rebuttal issue.

[13]. Having considered the arguments of both sides, I am of the view that ratios of **Ranjit Singh's** case (supra) is not applicable to the present case inasmuch as that issue No.6 cannot be treated to a rebuttal issue in view of specific denial of defendant No.1 in the written statement in the context of execution of agreement to sell dated 18.06.2004. It was the obligation of the plaintiff to rebut the plea of the agreement

dated 18.06.2004 being forged and fabricated as projected by defendant No.1 in the written statement.

[14]. Concededly the plaintiff has not reserved any right to lead rebuttal evidence while closing his evidence in affirmative.

Ratios of **Surjit Singh and others**, **Jagdev Singh and others** and **Avtar Singh's** cases (supra) are fully applicable to the present case.

[15]. In the light of aforesaid facts, I do not see any merit in the arguments of learned counsel for the petitioner. Consequently, this revision petition is dismissed being bereft of merits.

October 04, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No