

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CIVIL REVISION No 3534 of 2017
DECIDED ON: MAY 16, 2017

SUNDER SINGH

.....PETITIONER

VERSUS

OM PARKASH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Surender Saini, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated April 05, 2017 passed by learned Additional Civil Judge (Sr. Division), Ganaur in Civil Suit No. 334/12 dated February 29, 2012 titled "Sunder Singh vs. Om Parkash", vide which an application preferred by the petitioner/plaintiff for comparison thumb impression appearing on the agreement to sell as well on receipt dated December 15, 2006 with the thumb impression appears on the written statement; has been dismissed.

The contention of learned counsel for the petitioner is that he filed a suit for possession by way of specific performance of agreement dated December 15, 2006 with consequential relief of permanent injunction. The said suit was contested by the respondent/defendant by

filing written statement, issues were carved out from the pleadings of the parties and parties were directed to lead their respective evidence. In the written statement the respondent/defendant denied his thumb impressions on the agreement to sell in question dated December 15, 2006, receipt and power of attorney (vakalatnama). However, he has stated that he appended his thumb impression on the statement made by him before the Court as well as on the written statement filed by him in the Court. Similarly, he has also denied his thumb impression appearing the stamp papers produced by him from the stamp vendor and to prove the fact that the afore-said documents appear the thumb impression of respondent/defendant, it is necessary for the examination of hand writing expert after getting the comparison with disputed thumb impression as well as specimen thumb impression or the admitted thumb impression.

Learned counsel for the petitioner further contends that respondent/defendant is not going to suffer any loss or going to be caused any prejudice, in case the present application is allowed. Rather it would be enable the Court to pronounce the effective judgment. It would also bring the malafide of respondent/defendant to the fore.

After bestowing the due consideration to the rival submissions made by learned counsel for the petitioner and appraisal of the impugned order as well as other documents does not find any merit in the submission made by learned counsel for the petitioner.

Firstly, it can be said that an application seeking comparison of thumb impression of the respondent-defendant is an after thought and has been filed at a belated stage. The issues were carved out way back in

the year 2012 from the pleadings of the parties and burden to prove the factum of execution of agreement to sell was heavily upon the petitioner/plaintiff but there is nothing on record to suggest that as to why he kept mum for such a long period and did not move any such application when the suit was listed for his evidence. It also cannot be said that the petitioner was not aware of these facts prior to the filing of the application in question. Rather, it can be safely inferred that he was in the knowledge of these facts from the date of filing of written statement by the respondent/defendant, who had categorically denied his thumb impression not only on the agreement to sell, receipt but also on the power of attorney. It was incumbent upon the petitioner to prove the execution of agreement to sell in his affirmative evidence. The petitioner/plaintiff has miserably failed to depict that despite due diligence, he could not produce the additional evidence earlier or that it was not in his knowledge previously. The application is nothing but a device adopted by the petitioner/plaintiff to delay the disposal of the suit as well as to fill up the lacunae.

In view of the afore-said discussion, this Court does not find any infirmity or illegality in the impugned order, so as to cause any interference in it.

Accordingly, finding no merit in the instant revision, the same is dismissed.

No order as to costs.

MAY 16, 2017
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JASPAL SINGH
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No