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

**Civil Revision No.4958 of 2016
Date of Decision: 14.09.2017**

JAGDEEP SINGH

.....Petitioner

Vs

IQBAL ISNGH AND ANR

....Respondents

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

Present:Mr. Sherry K. Singla , Advocate
for the petitioner.

Mr. S.S. Salar, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 25.07.2016 passed by the Addl. Civil Judge (Sr. Divn.) Malerkotla vide which application for granting permission to lead expert evidence in rebuttal was declined.

[2]. Brief facts are that the plaintiff filed a suit for specific performance on the basis of agreement to sell dated 03.09.2008 in respect of land measuring 10 *Bighas* 17 *Biswas*. In the written statement filed by defendant No.2, factum of agreement to sell dated 10.06.2008 was pleaded in para No.5 of the additional

objections filed by defendant No.2. The same reads as under:-

“5. *That true facts of the case are that Iqbal Singh defendant no.1 vide Agreement to Sell dated 10.06.2008 agreed to sell his land in dispute measuring 10B-17B-17B with the defendant no.2 at the rate of Rs. 2,52,000/- per Bigha for the Total Sale proceed of Rs.27,45,000/- and received a sum of Rs.7,00,000/- as earnest money from the defendant No.2 and agreed to execute the sale deed in favour of Balvir Singh defendant no.2 or his nominee upto 30-11-2009, at the expenses of Balvir Singh defendant no.2 and further agreed to deliver the possession of the suit land at the time of execution of sale deed. Iqbal Singh defendant no.1 also further agreed in case he do not execute the sale deed in favour of answering defendant as per terms of Agreement in that event Balvir Singh shall have the right to get the sale deed executed in his favour through Court or to receive a sum of Rs.16,00,000/- Earnest amount as paid by answering defendant along with Rs.16,00,000/- as damages. It was further agreed in case answering defendant does not get the sale deed executed in his favour as per terms of Agreement in that event Iqbal Singh defendant no.1 shall have the right to forfeit the Earnest money paid by the answering defendant to Iqbal Singh defendant no.1. That regarding the terms and conditions agreement to sell dated 10-6-2008 was executed between the answering defendant and Iqbal Singh defendant no.1. Iqbal Singh defendant no.1 received Rs.7 Lacs in cash*

from the answering defendant. The original agreement to sell dated is attached with the suit no.505 of 23.12.2009 titled as Balvir Singh versus Iqbal Singh.”

[3]. In the replication filed, by the plaintiff/petitioner the factum of aforesaid agreement to sell was denied altogether, rather the same was claimed to be forged, fictitious, fabricated and ante dated document.

[4]. Trial Court vide order dated 04.01.2016 framed the necessary issues. Issue Nos.1 and 6 are to the following effect:-

- “1. Whether the plaintiff is entitled to possession by way of specific performance of agreement to sell dated 3.9.2008 and subsequent writing dated 1.4.2009? OPP*
- 6. Whether the defendant no.1 executed agreement to sell dated 10.6.2008 regarding the suit property in favour of the defendant no.2 and executed the sale deed Wasika no.31 dated 11.4.2011 in favour of the defendant no.2? OPD (def.No.2)”*

[5]. Plaintiff led his evidence and thereafter defendant No.2 also led his evidence in the context of issue No.6. The plaintiff filed an application for granting permission to lead rebuttal and directing the stamp vendor to produce his register of deed writing containing entry no.1422 dated 10.06.2008 and 11.06.2008. Para Nos.2 and 3 of the application are to the

following effect:-

2. *That in order to prove the issues no.6 to 10, especially issue no.6, defendant no.2, besides the other witnesses also examined Sh. Davinder Kumar, Stamp Vendor, Dhuri as his witness and he appeared as D.W.3 and tendered his affidavit Ex.DW-3/A vide which he deposed that on 10.6.2008, Iqbal Singh (defendant no.1) purchased stamp paper of Rs.500/- for agreement to sell and he made entry at Sr. No.1422 dated 10.06.2008 in his register.*

In the cross examination he admitted that there are two entries in his register bearing no.1422. One is dated 10.06.2008 and other is dated 11.06.2008. He also produced page no.60 of his register as Ex.P-23. This shows that he was having one stamp paper of the value of Rs.500/- with him at the evening of 10.06.2008 / closing of 10.06.2008 and he cut the same and made it sign of cross. This cross was marked on point 'A' on exhibit P-23 and this cross was different from the other crosses marked at points 'B' to 'O' but he stated that he does not find any difference between the crossing at point 'A' and points 'B' to 'O'.

3. *That in order to rebut the issue no.6 and above said evidence, plaintiff wants to lead rebuttal evidence. In rebuttal evidence, he wants to examine Sh. R.V. Vashishta, Handwriting and Finger Print Expert, Patiala. He will take the photographs of the original of Ex.P-23 and will depose as to the whether the crossing at point 'A' is in the same manner or in different manner as compared to crosses at point 'B' to 'O'.*

[6]. Evidently, the petitioner seeks to prove the cuttings in the entries in the register of the deed writer for which the entries

are sought to be examined by the Expert.

[7]. Learned counsel for the respondents has no obvious objection to the aforesaid course, but he prays for leading the expert evidence to counter the report of the Expert, if any against defendant No.2 in respect of the aforesaid entries.

[8]. In view of above, the impugned order dated 25.07.2016 passed by the Addl. Civil Judge (Sr. Divn.) Malerkotla is set aside. This revision petition is disposed of by allowing the application for granting permission to lead rebuttal evidence by the petitioner in respect of issue No.6, the onus of which was on defendant No.2 strictly in terms of alleged cuttings in the register of Devinder Kumar, stamp vendor. *Qua* the writing at entry No.1422 dated 10.06.2008 and 11.06.2008, defendant No.2 will be at liberty to examine the witness in accordance with law.

September 14, 2017

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No