

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5069 of 2013(O&M)
Date of Order: 28.07.2017.

Harjinder Singh and another

..Petitioners

Versus

Nachattar Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Sethi, Advocate,
for the petitioners.

ANIL KSHETARPAL, J.

Plaintiffs have filed the present revision petition under Article 227 of the Constitution of India, impugning the order passed by Additional Civil Judge (Senior Division), Ambala, dated 03.05.2013, refusing to give directions to defendants no.2 and 3 to give their specimen signatures and defendants no.1 and 4 for giving their specimen thumb impression for comparison.

Plaintiffs had filed a suit for grant of a decree of specific performance of agreement to sell executed between the parties on various occasions.

In the written statement, defendant took a stand that all the agreements executed between the plaintiffs and defendants have matured into sale deeds and there is no subsisting agreement between the parties. Defendants further took a stand that the agreement and receipts now set up are forged and fabricated documents.

Learned trial court after examining the pleadings, curled out

following issues:-

- “1. *Whether the defendants executed agreement for sale dated 07.05.2004, 09.05.2004 and 21.12.2004, 04.11.2006, 25.10.2006 and 20.01.2007 in favour of the plaintiffs for sale of the suit land?OPP*
2. *Whether the plaintiff always remained ready and willing and are still ready and willing to perform their part payment of the contract?OPP*
3. *Whether the plaintiffs have no locus standi and cause of action to file and maintain the present suit?OPD*
4. *Whether the alleged agreements are forged and fabricated documents, if so its effect?OPD*
5. *Whether the plaintiffs are entitled to decree for possession by way of specific performance of agreements to sell in question?OPD*
6. *Relief.”*

It would be clear from the reading of issue no.4 that onus to prove that the alleged agreements were forged and fabricated, was on the defendants. Plaintiffs concluded their evidence in affirmative.

Defendants while appearing in the Court took a stand that signatures and thumb impressions on the documents in question are not put by them and these signatures and thumb impressions have been forged and fabricated.

That while issuing notice of motion, this court passed the

following order:-

“Counsel for the petitioners contended that necessity to obtain specimen signatures/thumb impressions of the defendants and to get the same compared with those on disputed documents through handwriting and finger print expert, by way of rebuttal evidence or additional evidence, arose because the defendants in their written statement had not denied their signatures/thumb impressions on the said documents (although denied the execution thereof), but in the witness box, defendant no.3, while appearing as DW-1, denied the signatures/thumb impressions on the documents in question.

Notice of motion for 08.11.2013.

Respondents be also served through their counsel in the lower court namely Mr. D.S.Punia, Advocate, Ambala City.

Meanwhile, passing of final judgment by the trial court shall remain stayed.”

I have heard counsel for the parties at length and with their able assistance gone through the paper book.

It is well settled that plaintiff can be permitted to lead evidence in rebuttal only with respect to an issue or issues onus whereof is on the defendant. Onus to prove issue no.4, which is with regard to forged and fabrication of agreement to sell was on the defendants. Therefore, the plaintiffs certainly had right to lead evidence in rebuttal.

Since, primarily the issue which requires determination of Court is whether the agreements to sell are forged or fabricated. Therefore, the opinion of handwriting and finger print expert would help the Court in adjudication of the dispute.

The Hon'ble Division Bench in the judgment reported as Surjit Singh v. Jagtar Singh, 2006(1) PLJ, 732, held that if there are several issues and onus to prove some of the issues is on the defendant then with respect to the issues onus whereof was on the defendant, the plaintiff has a right to lead evidence in rebuttal.

The learned trial Court while deciding the application has misdirected itself. The learned trial Court has failed to examine the law laid down by this Court in the proper perspective. In these circumstances, the revision petition is allowed and the order dated 03.05.2013, passed by Additional Civil Judge (Senior Division), Ambala, is set aside.

Defendants are directed to give their specimen signatures/thumb impressions for comparison.

July 28, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No