

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

**CR No.4792 of 2017(O&M)
Date of Decision: 16.08.2017**

Baldev Singh

.....Petitioner

Versus

Harchand Singh and others

... Respondents

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

Present:Mr. Balbir Singh Saini, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed this revision petition against the order dated 17.05.2017 passed by Civil Judge (Junior Division), Fatehgarh Sahib, vide which prayer for examining an expert in additional evidence was declined.

[2]. Plaintiff filed a suit for separate possession and permanent injunction on the basis of agreement dated 12.11.2001.

[3]. Plaintiff has already led his evidence in affirmative. There was a denial to the aforesaid agreement in the written statement filed by the defendant. Defendant Gurwinder Singh while appearing as DW 1 has refused to identify the signatures of his father Tarlochan Singh on the agreement dated 12.11.2001 and also on the alleged statement made to the police. Both the parties have already concluded their evidence.

At the stage of rebuttal and arguments, the present application

came to be filed for additional evidence for leading expert evidence in the context of comparison of the signatures appearing on the agreement.

[4]. Having considered the submissions made by learned counsel for the petitioner, I find that in the written statement, defendant Gurwinder Singh has specifically denied the signatures of his father on the agreement dated 12.11.2001. The plaintiff could have added more authenticity to his evidence in affirmative. The case is 8 years old before the trial Court, in which about 19 opportunities were availed by the plaintiff for leading his evidence. Had it been a case of no denial of signature of the father of defendant Gurwinder Singh in the written statement, even then by deposing as DW 1, defendant could not have improved his case in the absence of any foundation in the pleadings, but in case of denial in the written statement, the plaintiff was required to lead expert evidence in his affirmative evidence in order to give more authenticity to his evidence. The onus of the issue was on the plaintiff himself and the plaintiff cannot lead evidence in rebuttal or by way of additional evidence in respect of an issue, the onus of which was on the plaintiff himself.

[5]. On the strength of observations made in ***Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil)***

537 DB; Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794 and Avtar Singh vs. Baldev Singh, 2015(1) PLR 230, it can be concluded that the plaintiff is not entitled to lead evidence in rebuttal in respect of an issue, the onus of which was upon himself.

[6]. In **Ram Kumar vs. Raj Kumar and others, 2014(3) CivCC 453**, it has held that handwriting expert cannot be allowed to be examined in rebuttal and even cannot be allowed by way of additional evidence as this fact was within the knowledge of the petitioner at the time, when he was leading evidence in affirmative. Parties cannot be allowed to fill lacuna by adducing additional evidence without satisfying the Court that such an evidence is required for effective adjudication of the case.

[7]. Plaintiff had the knowledge from the very beginning. Having failed to lead evidence in affirmative and also in rebuttal, plaintiff cannot resort to an application under Order 18 Rule 17-A CPC as the same would be having the effect of filling lacuna and would be in negation to the order vide which prayer for leading evidence in rebuttal could have been declined.

[8]. In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal vs. Ajmer Singh and another, 2014(4) Law Herald 3627**, this Court held that the additional evidence cannot be

allowed to be led by the plaintiff, when evidence was within his knowledge at the time of leading evidence in affirmative. Additional evidence to contradict the evidence of the defendant cannot be allowed in such circumstances. No satisfaction could be made out with regard to the fact that the evidence in question was not within the knowledge of the plaintiff at the time of leading evidence in affirmative. The discretion under inherent powers of the Court cannot be exercised in the facts and circumstances of the case.

[9]. Learned counsel for the petitioner relied upon **Pawan Kumar and another Vs. Vijay Kumar and others, 2011(2) Civil Court Cases 255** in support of his contention.

[10]. In the said case, though it was ordered that handwriting expert cannot be allowed at the stage of rebuttal, however, one of the attesting witness appeared as defence witness and denied his signature. In that eventuality, it was thought appropriate to allow the plaintiff to contradict the statement of the attesting witness which otherwise could not be attacked while leading the evidence in affirmative.

[11]. The facts involved in the aforesaid case are not relevant in the present context. Similar were the facts involved in **Jugraj Singh etc. Vs. Darshan Singh etc., 2000(1) Civil Court Cases 119.**

[12]. In the light of ratio laid down in Surjit Singh's case (supra), Jagdev Singh's case (supra) and Avtar Singh's case (supra), I am of the view that no indulgence can be granted in favour of the petitioner. Petitioner being the plaintiff is not entitled to lead expert evidence at this stage in respect of an issue which is legally required to be proved by him while leading his evidence in affirmative and the onus is required to be discharged by the plaintiff himself on the strength of his evidence in affirmative.

[13]. In view of above, the present revision petition is dismissed.

16.08.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No