

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

**CR No.6488 of 2017(O&M)**

**Date of decision: 28.9.2017**

Satpal (since deceased) through his LR Jai Chand .....Petitioner

VERSUS

Sewa Ram and others .....Respondents

\*\*\*\*\*

**CORAM:**    **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present:     Mr. Parminder Singh, Advocate for the petitioner.

\*\*\*\*\*

**REKHA MITTAL, J.**

The present petition directs challenge against order dated 21.07.2017 passed by the trial Court whereby application for not permitting the plaintiff/respondent No.1 to lead evidence in rebuttal qua the issue onus whereof lies upon the plaintiff/respondent has been dismissed.

Counsel for the petitioner - Satpal (since deceased) now represented by his LR has argued that respondent No.1/plaintiff has filed a suit for specific performance of agreement to sell dated 27.06.1997 purported to be executed by Satpal for a sale consideration of Rs.75,000/-. Defendant filed the written statement contesting claim of the plaintiff with regard to sale of the house in question with the averments that he had delivered possession of the house to the plaintiff as a licensee as the plaintiff along with his son Ashok Kumar requested the defendant to allow the house to be used for their personal purpose with a promise to vacate the same as and when requested by the defendant. It is averred that agreement

to sell dated 27.06.1997 as well as receipt of Rs.75,000/- are false, forged and fabricated. It is further submitted that during pendency of the suit, Satpal – defendant passed away on 14.04.2014 and his legal representatives, petitioner and performa respondents were brought on record and they adopted the written statement filed by Sh. Satpal. It is argued with vehemence that as the respondent/plaintiff was well aware about stand of the defendant denying the agreement to sell propounded by the plaintiff, the plaintiff could examine an handwriting and fingerprints expert (in short 'the expert') while adducing evidence in affirmative in order to discharge the onus of the issue(s) cast upon him but the trial Court has wrongly allowed him to examine the expert in rebuttal evidence by dismissing the application for denial of permission to the plaintiff to lead evidence in rebuttal.

I have heard counsel for the petitioner, perused the paper-book and various annexures including the order impugned.

Perusal of the impugned order makes it evident that the trial Court has not permitted the plaintiff/respondent to examine the expert on the basis of comparison of signatures of Sh. Satpal, alleged executant of the agreement of sale but has allowed examination of the expert for comparison of signatures of DW-1 and DW-2 namely Jai Chand and Jai Ram, sons of deceased Satpal who denied their signatures on the agreement to sell Ex.P1, in cross examination. The trial Court, in para 5 of the impugned order has held that in the written statement, defendant submitted that agreement to sell is the result of fraud and fabrication but contents of forgery and fabrication were not mentioned by the defendant. Applicants were impleaded as legal heirs after death of Satpal and in the

written statement, defendants nowhere disputed their signatures on agreement to sell Ex.P1. It is for the first time, in their cross examination, they denied their signatures on agreement to sell Ex.P1, therefore, to prove signatures of DW1 and DW2 on agreement to sell Ex.P1, opportunity must be granted to the plaintiff in rebuttal.

Counsel for the petitioner has not disputed correctness of factual findings recorded by the trial Court. This apart, perusal of the plaint as well as written statement filed by the parties would substantiate the observations recorded by the trial Court that the defendant by way of written statement has not denied signatures of Jai Chand and Jai Ram (sons of Sat Pal) on the agreement. After death of Satpal, Jai Chand and Jai Ram were allowed to be impleaded as legal representatives of deceased Satpal besides Shiksha Devi and Sunita, widow and daughter respectively of Sh. Satpal. Jai Ram and Jai Chand did not make a request to file the written statement in their independent capacity after they were brought on record as LRs of deceased Satpal. Under the circumstances, the respondent/plaintiff had no notice of the stand of Jai Ram and Jai Chand, in regard to their alleged signatures on the agreement to sell, therefore, there was no opportunity with the respondent/plaintiff to examine the handwriting and fingerprints experts to prove signatures of Jai Ram and Jai Chand in his affirmative evidence. In this view of the matter, I do not find any patent error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, it is clarified that the respondent/plaintiff shall be entitled to examine the expert only qua signatures of Jai Ram and

Jai Chand and not with regard to signatures/thumb impressions of Satpal – defendant.

**SEPTEMBER 28, 2017**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no