

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

CR No. 6605 of 2014(O&M)

Date of decision: 31.8.2017

Parkash Kaur and others

....Petitioners

VERSUS

Joginder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Raj Paul Kansal, Advocate for the petitioners.

Mr. Mahavir Sandhu, Advocate for respondent No.1.

Mr. G.S. Poonia, Senior Advocate with
Ms. Harveen Kaur, Advocate for respondents No.3 to 5.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 03.07.2014 (Annexure P-2) passed by the Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioners to allow handwriting and fingerprints expert to compare the signatures and thumb impression on agreements to sell has been dismissed.

Counsel for the petitioners has submitted that predecessor in interest of the petitioners filed a suit for permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiff (now represented by his LRs) as well as specific performance of agreements to sell dated 17.04.1995 and 25.09.1996 executed by the defendants and late Dhanna Singh in favour of the plaintiff regarding land detailed in head-note of the plaint. The plaintiff examined the witnesses but cross examination of Puran Singh PW-3 was treated as Nil. The

respondents/defendants filed Civil Revision No.1378 of 2012 to express their grievance against they being not permitted to cross-examine Puran Singh PW-3 and in the said case, an interim order was passed by this Court directing that the trial Court shall not close evidence till disposal of the revision. It is further argued that the aforesaid revision was eventually decided on 26.03.2014 whereby the respondents/defendants were provided with an opportunity to cross examine Puran Singh PW-3 subject to payment of costs of Rs.5,000/-. Subsequent thereto, Puran Singh PW-3 was cross examined by the respondents and the instant application was filed by the petitioners for permission to allow the expert to be examined on the basis of comparison of signatures/thumb impression on the agreements to sell but the same has been wrongly rejected by the Court below. It is further submitted that necessity to examine the expert accrued after the respondents were permitted to cross examine Puran Singh PW-3. The last submission made by counsel is that a serious prejudice shall be caused to the petitioners in case they are not allowed to examine the expert witness.

Counsel for the respondents, on the contrary, would urge that as the petitioners voluntarily closed their evidence by making a statement on 13.08.2012, they cannot be heard to say that the Court below has committed any error or there is contravention of stay order passed by this Court in the aforesaid revision petition. Another submission made by counsel is that the respondents have already closed their evidence. The petitioners filed another application for examination of expert in rebuttal evidence and the same was dismissed by the trial Court on 23.09.2014 but the said order has not been challenged by the petitioners, therefore, has attained finality.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

It is undisputed position of the case that after examining witnesses by the petitioners, they closed their evidence on 13.08.2012. However, the respondents/defendants were not allowed to cross examine Puran Singh PW-3. The respondents/defendants approached this Court by filing Civil Revision No.1378 of 2012 for permitting them an opportunity to cross examine Puran Singh PW-3. In that case, this Court passed an interim order directing the trial Court not to close evidence of the petitioner/plaintiff. Later, the petition was disposed of on 26.03.2014 and the respondents/defendants were given an opportunity to cross examine Puran Singh PW-3 subject to payment of costs of Rs.5,000/-. Meaning thereby that Puran Singh PW-3 was cross examined by the respondents/defendants subsequent to 26.03.2014. The petitioners closed their evidence in August 2012 when there was no cross examination of Puran Singh PW-3. After cross examination of Puran Singh PW-3 was conducted, they felt the necessity to examine handwriting and fingerprints expert to prove their case. Under the circumstances, any proceedings conducted by the trial Court during pendency of the earlier revision petition would not cause prejudice to right of the petitioners to seek examination of handwriting and fingerprints expert in their affirmative evidence.

Perusal of the impugned order would reveal that the trial Court has failed to appreciate that since after closing of evidence by the petitioners, an opportunity was provided to the respondents/defendants to cross examine Puran Singh PW-3, the petitioners could exercise their discretion to examine any further witness after taking into consideration

the facts elicited in cross examination of PW-3. That being so, closing of evidence by the respondents or dismissal of application for examination of expert witness in rebuttal would not enure to benefit of the respondents. In the given scenario, learned trial Court has committed an error apparent on the face of record which needs to be rectified by this Court. Resultantly, the present petition is allowed, impugned order is set aside and the petitioners are provided with an opportunity to examine the handwriting and fingerprints expert. After examination of the witness, the respondents shall be entitled to rebut that evidence even if they have already closed their evidence.

The petition is disposed of in the aforesaid terms.

AUGUST 31, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no