

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

Civil Revision No. 7350 of 2015

Date of Decision: September 18, 2017

Surinder Kaur

..Petitioner

Versus

Rajwant Singh and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Rajan Bansal, Advocate
for the petitioner.

Mr. Tushar Sharma, Advocate
for the respondents.

REKHA MITTAL, J.

The present petition directs challenge against order dated 08.10.2015 (Annexure P-8) passed by the Civil Judge (Sr. Division), Barnala, whereby the plaintiffs/respondents have been allowed to examine Handwriting and Fingerprints Expert by way of additional evidence.

Counsel for the petitioner/defendant has submitted that the respondents/plaintiffs had filed a suit for permanent injunction restraining the petitioner from interfering in peaceful enjoyment of water from tubewell situated in Khasra no.1243 for irrigation of land measuring 20

Kanals detailed in head note of the plaint, situated at Dhanaula Khurd and further restraining the petitioner from creating any obstacle for the plaintiffs from using 1/3rd share of the tubewell. As per plea of the respondents/plaintiffs, they got registered sale deed dated 28.11.2006 in favour of the petitioner but till date the plaintiffs have not challenged the said sale deed. The plaintiffs have relied upon agreement to sell dated 19.08.2006 with the averments that agreement was executed with the petitioner to sell 2/3rd share of said tubewell.

The petitioner/defendant filed the written statement specifically controverting the allegations with regard to execution of agreement dated 28.11.2006. Counsel for the petitioner has pointed out that in para 2 of the written statement, on merits, it has been averred to the following effect:-

“No such agreement to sell is got executed by defendant in favour of plaintiffs. The said agreement to sell is fake, forged and fabricated. Moreover, said agreement to sell is without any consideration and is un-registered, and is not fit to be put in evidence and the defendant is not bound to the same.”

It has been argued with vehemence that in view of stand of petitioner in the written statement, it was clearly known to the respondents/plaintiffs that the petitioner/defendant has all together denied execution of agreement to sell dated 28.11.2006 propounded by the respondents/plaintiffs. The plaintiffs took more than two years in completing their evidence on the basis of issues framed in the year 2011

and voluntarily closed their evidence knowing fully well stand of the petitioner in the written statement, therefore, they cannot seek indulgence of the court for examination of the so called Expert on the basis of comparison of signatures on the agreement to sell with the standard signatures of the petitioner by way of additional evidence. In support of his contention, he has referred to judgments of this Court *M/s. Satyam Steel Vs. Smt. Sarla and another 2017(1) RCR (Civil) 902* and *Raghubir and others Vs. Parkash and others 2016(4) Law Herald 3527*.

Another submission made by counsel is that after evidence of the petitioner was closed, the respondents prayed for examination of the Handwriting Expert in rebuttal evidence. The petitioner filed an application that the respondents are not entitled to examine an Expert in rebuttal and the said application was decided by the trial Court in favour of the petitioner. Later, the respondents filed an application for additional evidence but the same was allowed by the trial Court without correctly appreciating the settled position in law that additional evidence can be allowed only if a party is able to make out a case that the said evidence was not to his knowledge at the appropriate stage or the same could not be adduced despite exercise of due diligence.

Counsel representing the respondents, on the contrary, has supported the impugned order with the submission that no prejudice shall be caused to the petitioner in case the respondents are allowed to examine the Expert as the petitioner shall be entitled to an opportunity to rebut the

additional evidence. It is further argued that though the petitioner has denied execution of agreement dated 28.11.2006 but she has not specifically stated in the written statement that the agreement does not bear her signatures. When she appeared in the witness box, in her cross-examination, she categorically denied her signatures on the agreement, therefore, necessity to examine the Handwriting Expert on the basis of comparison has arisen. In support, he has referred to judgments of this Court *Jaswant Singh Vs. Jagjit Singh 2016(3) PLR 15* and *Ashok Kumar Vs. Dalip Kumar*, Civil Revision No. 6514 of 2010, D.O.D. 28.03.2012.

I have heard counsel for the parties and perused the paper book.

The trial Court, on the basis of the pleadings of the parties, framed issues on 20.10.2011, recorded in para 5 of the grounds of revision. Issue no.1 reads as follows:-

“Whether the plaintiff is entitled to use of 1/3rd share in the motor connection on the basis of writing dated 28.11.2006? OPP”

The respondents/plaintiffs staked their claim for permanent injunction to enjoy water from tubewell situated in khasra no. 1243 primarily on the basis of agreement to sell dated 19.08.2006, purported to be executed by the petitioner/defendant and on that basis, issue no.1 reproduced hereinbefore was framed by the trial Court and onus of the same was placed upon the respondents/plaintiffs. The petitioner/defendant in her written statement specifically controverted the allegations with

regard to execution of agreement dated 28.11.2006 and a relevant extract from para 2 of the written statement has been reproduced hereinbefore. The very fact that petitioner has denied execution of agreement dated 28.11.2006 and the trial Court has framed a specific issue in this regard, it was an obligation of the respondents/plaintiffs to adduce their entire evidence including examination of a handwriting and Fingerprints Expert in their evidence in affirmative. Contention of the respondents that the petitioner had not specifically denied her signatures on the agreement in the written statement, is not meritorious in the face of allegations that the petitioner has specifically denied execution of any such agreement with additional averments that the agreement is fake, forged and fabricated. In this view of the matter, the respondents/plaintiffs cannot stake their claim for examination of the so called Expert on the premise that the petitioner denied her signatures for the first time in her cross-examination.

So far as the judgments relied upon by counsel for the respondents, the same have no bearing to support contention of the respondents and order passed by the trial Court. In **Ashok Kumar's** case (supra), the plaintiffs had filed suit for recovery of money on the basis of pronote and receipt. The defendant alleged the pronote and receipt to be fabricated documents. The defendant in his evidence examined Handwriting Expert as a witness besides leading other evidence. The plaintiff by moving application wanted to examine Handwriting Expert in rebuttal of Handwriting Expert examined by the defendant or in the

alternative by additional evidence. The trial Court allowed plaintiff's application and permitted him to examine the Handwriting Expert in rebuttal. This Court did not accept contention of the plaintiff for examining the Handwriting Expert in rebuttal but allowed examination of the Handwriting Expert by way of additional evidence as the defendant had examined Handwriting Expert as a witness. Similarly in *Jaswant Singh's* case (supra), there was a dispute between the parties qua agreement to sell and the defendant raised the defence that the agreement is forged and fabricated and signatures obtained on blank papers have been filled up with false recital. The plaintiff had examined himself and one witness and closed his evidence. The defendant produced evidence and also examined an Expert to state that one of the signatures found in the agreement as that of a marginal witness was not of such witness. After defendant's evidence was closed, the plaintiff had brought evidence with reference to a particular signatures of the marginal witness to say that it was his and sought to examine his Expert. This Court in view of the peculiar circumstances of the case has held that the plaintiff is permitted to examine the Expert as an additional evidence. In the case at hand, counsel for the parties, in response to a query by the Court, have fairly informed that the petitioner has not examined Handwriting Expert to substantiate her contention that agreement to sell dated 28.11.2006 has not been executed by her. Under the circumstances, the respondents cannot derive any advantage to their contention from the referred authorities.

In view of the aforesaid discussion, I find merit in contention of the petitioner that judicial discretion exercised by the trial Court is not well founded, thus, the Court has committed an error on the face of record, therefore, the order impugned is liable to be set aside and ordered accordingly.

For the foregoing reasons, the petition is allowed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(REKHA MITTAL)
JUDGE

September 18, 2017
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No