

It comes out that plaintiff has filed a suit for possession by way of specific performance of the agreement to sell dated 1.10.2006 and permanent injunction. In the written statement, defendant denied execution of agreement to sell. From the impugned order, it comes out that plaintiff got as many as nine effective opportunities spreading over two years and closed his evidence on 27.4.2017. Thereafter, defendant also closed the evidence. Now, the case is fixed for rebuttal evidence when plaintiff moved an application to examine the expert witness for comparison of signatures of defendant on the agreement of sale with the admitted signatures on the power of attorney and written statement.

I am of the view that said evidence was to be led in affirmative. The denial of signatures on agreement to sell in the written statement was within the knowledge of plaintiff. The provision of referring to additional evidence has been deleted vide Code of Civil Procedure Amendment Act, 2002. The powers are exercised only in cases where such evidence is just for decision of the case. Plaintiff is already stated to have examined witnesses of agreement to sell to prove the same. Therefore, evidence of expert witness is otherwise not necessary for just decision of the case. No ground is made out to interfere in the impugned order. Consequently, revision is dismissed. Since main petition has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

23.3.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No