

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

CR No.2021 of 2017

Date of Decision:-21.2.2018

Sanjiv Kumar

...Petitioner

Versus

Gulraj Singh (deceased) through LR's and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. S.S. Sarwara, Advocate
for LR of respondent No.1(i) to 1(iv).

AMIT RAWAL J.(Oral)

The revision petition is directed at the instance of petitioner-defendant No.4-Sanjiv Kumar against the order dated 08.3.2017 whereby the application to examine the Handwriting and Finger Print Expert for the purpose of comparison of disputed signatures of defendant No.3 on the agreement to sell dated 7.7.2010 has been dismissed.

Learned counsel appearing on behalf of petitioner submitted that plaintiff instituted a suit seeking specific performance of agreement to sell aforementioned by arraying defendants No.1 to 3 whereas defendants Nos.2 and 3 already executed agreement to sell dated 2.12.2010 and there was Civil Court decree dated 4.1.2012 in favour of defendant-petitioner

whereby the sale deed in respect of the aforementioned agreement had been executed. Petitioner-defendant No.4 had specifically taken a stand that there was apparent collusion between the plaintiff and defendants No.1 to 3 and therefore the onus would not be on the plaintiff to discharge and it is in that background the application was moved but the same has erroneously been dismissed.

On the other hand Mr. S.S. Sarwara, Advocate learned counsel appearing for respondents No.1(i) and 1(iv) submitted that once the defendant No.3 denied the signatures, the onus shifted upon the plaintiff to prove existence of such agreement, therefore, the application has rightly been dismissed by the Court below.

I have heard learned counsel for the parties and appraised the paper book.

Following stand has been taken in para 2 of the written statement, which reads as under :-

“2. That para No.2 of the plaint is wrong and hence denied. It is incorrect that defendants No.1 to 3 received a sum of Rs.1,50,000/- as an earnest money from Gulraj Singh now deceased. In fact, as stated above by the answering defendant in para No.1 of the written statement that the alleged agreement to sell dated 7.7.2010 is a result of fraud and result of collusion of the plaintiffs and defendants No.1 to 3, therefore, the plea of receiving any earnest money of Rs.1,50,000/- has been taken only with a view to frame the present suit and to show that the agreement to sell is genuine document which in fact is not genuine.”

From the perusal of the aforesaid, there is categoric pleading on behalf of the petitioner with regard to the plea of defendants No.1 to 3. In that regard the applicant-petitioner-defendant No.4 wants to ensure that the aforementioned collusion do not surface and probably keeping in view that apprehension the plaintiff did not examine the signatures of defendant No.3. The agreement to sell dated 7.7.2010 though has categorically been denied. In view of such stand taken by the petitioner, the trial Court ought to have allowed the application, because the case was listed for defendants' evidence.

Resultantly, the revision petition is allowed. The application moved by the petitioner-defendant No.4 before the Court below is allowed and he is accorded the permission to take the photographs for comparing the disputed signatures of Parwinder Kaur defendant No.3 on the agreement to sell dated 7.7.2010 with the admitted signatures on the other documents placed on record.

February 21, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No