

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

**Civil Revision No.2761 of 2018
Date of Decision: 21.05.2018**

Sukhinder Singh(deceased) through LR

.....Petitioner

vs

Rachhpal Singh and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Anoop Verma Advocate
for the petitioners.

Mr. Ishwar Lal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred for modification of order dated 17.03.2018 passed by the Addl. Civil Judge, Fatehgarh Sahib whereby prayer of leading evidence on behalf of defendant No.1 through LR was rejected except the documentary evidence.

[2]. Petitioner has prayed for one effective opportunity to lead evidence to prove report of handwriting expert which is already on record in the interest of justice.

[3]. Brief facts are that plaintiff/respondent No.1 filed a suit for possession by way of specific performance of agreement to

sell dated 28.06.2006 and permanent injunction. In the alternative suit for recovery of the earnest money and damages along with interest was also filed.

[4]. After filing the written statement, the issues were framed on 13.06.2008. Evidence of the parties started thereafter.

[5]. On 06.06.2011, defendant No.2/respondent No.2 filed an application under Order 1 Rule 10 CPC to get himself impleaded as party defendant No.2 in the suit. The prayer was allowed on 10.09.2011. Plaintiff/respondent No.1 was allowed to amend the plaint accordingly. Petitioner was also allowed to amend the written statement.

[6]. After filing of written statement by the added defendant No.2, plaintiff/respondent No.1 was further allowed to file replication. Thereafter issues were re-framed on 01.04.2013 and parties were allowed to lead their evidence.

[7]. In the amended plaint, para no.13-A was added by plaintiff/respondent No.1. In the said paragraph it was mentioned by plaintiff/respondent No.1 that defendant No.2 in collusion with defendant No.1 created the alleged agreement to sell dated 17.02.2006 in the back date. The agreement to sell dated 17.02.2006 was claimed to be false, forged and fabricated document and the same was without any consideration. No

such agreement to sell dated 17.02.2006 was ever executed by defendant No.1 in favour of defendant No.2. The said agreement to sell was the result of collusion between defendant No.1 and defendant No.2 in order to avoid performance of agreement to sell dated 28.06.2006 executed by defendant No.1 in favour of the plaintiff.

[8]. In the amended written statement filed by defendant No.1, there was no corresponding written statement filed *qua* para no.13-A of the plaint. In a way para no.13-A of the amended plaint was not denied. Plaintiff/respondent No.1 completed his evidence. Defendant No.1 after leading his evidence closed his oral evidence on 29.07.2010. With the impleadment of defendant No.2 under Order 1 Rule 10 CPC, an additional opportunity was granted to defendant No.1/petitioner vide order dated 24.07.2017 for leading evidence in furtherance of corresponding amendment carried out in the light of projected pleadings of defendant No.2.

[9]. Thereafter order dated 01.09.2017 came to be passed by the trial Court wherein it was noticed that DW-1 has been cross-examined. Defendant No.1/petitioner sought adjournment for examining the Expert on 04.09.2017. The prayer was opposed by the plaintiff. The Court also noticed the fact that vide order dated 24.07.2017, defendant No.1/petitioner was given an

opportunity to lead evidence for limited purpose i.e. in the limited context of leading evidence in furtherance of corresponding amendment carried out in the light of projected pleadings of defendant No.2. Under the garb of aforesaid liberty, defendant No.1 cannot open his defence evidence in affirmative again as the same had already been closed on 29.07.2010. The Court declined the prayer of leading evidence by defendant No.1 over and above the scope of order dated 24.07.2017. No evidence was led by defendant No.1 in the context of order dated 24.07.2017. In this way order dated 01.09.2010 passed by the trial Court has to be taken as an order closing the evidence of defendant No.1 on second occasion.

[10]. In the impugned order, the Court after noticing the aforesaid facts, came to the conclusion that since the evidence of defendant No.1 has been closed twice, therefore, defendant No.1 cannot be allowed to lead independent evidence afresh. However leading of documentary evidence by defendant No.1 was left open. Last opportunity was granted to defendant No.1 to conclude the entire documentary evidence.

[11]. In the backdrop of the aforesaid facts, particularly when permission was granted to defendant No.1/petitioner for a limited purpose of leading evidence in furtherance of

corresponding amendment carried out in the light of projected pleadings of defendant No.2, he did not avail the opportunity and led no evidence in the context of order dated 24.07.2017, but under the garb of that sought to lead evidence of Expert in his affirmative evidence which had already been closed on 29.07.2010.

[12]. In the light of facts on record, I am afraid no such permission can be granted beyond the scope of order dated 24.07.2017 which has already become final. The order dated 29.07.2010 passed by the trial Court was never assailed in any manner. Even the order dated 01.09.2017 has not been assailed in any Forum.

[13]. In view of above, no indulgence can be granted in favour of the petitioner/defendant No.1. This revision petition is accordingly dismissed.

May 21, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No.