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

**CR No.3452 of 2016(O&M)
Date of Decision: 15.05.2018**

Sheely Rani

.....Petitioner

Vs

Baljinder Kaur

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Manjit Singh Uppal, Advocate
for the petitioner.

Mr. R.K.Kakkar, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

The petitioner has assailed the order dated 07.05.2016 passed by Additional Civil Judge (SD), Mansa vide which the application dated 11.05.2015 filed by the plaintiff/respondent to obtain signatures of defendant/petitioner in Hindi to get the same examined from document expert with her signatures appearing on the agreement to sell was allowed.

Plaintiff/respondent filed a suit for specific performance on the basis of agreement to sell dated 14.01.2013 allegedly executed by the defendant/petitioner. In the written statement filed by the defendant/petitioner, she had denied her signatures in Hindi appearing on the agreement to sell. At the time when the plaintiff was leading her affirmative evidence, an application was filed by the learned

counsel for the plaintiff for the same relief but the same was sought to be dismissed as withdrawn by making specific statement in the Court on 19.08.2015. The Trial Court recorded the aforesaid fact that at the time of consideration of the application, learned counsel for the plaintiff sought withdrawal of the application at that stage. In view of the statement made by learned counsel for the plaintiff, the application was disposed of accordingly. Thereafter, both the parties led their evidence. Evidence of the plaintiff was concluded on 09.02.2016, when the statement of Surinder Kumar was recorded completely as PW-2, thereafter, plaintiff preferred to get his evidence closed without reserving any right to lead evidence in rebuttal. The case was adjourned for the evidence of the defendant. Thereafter, defendant also concluded her evidence. At the stage of argument, learned counsel for the plaintiff resorted to her earlier application in order to seek revival of the same. The prayer has been allowed vide the impugned order.

Learned counsel for the petitioner vehemently submitted that the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue the onus of which was on the plaintiff herself. He referred to issue No. 1 which was to the following effect:-

“Whether the plaintiff is entitled to specific performance of agreement or in the alternative entitled to recovery of suit amount? OPP”

By referring to ***Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) P&H 537 (DB)***, learned counsel for the petitioner submitted that when no right was reserved for leading evidence in rebuttal, the plaintiff cannot lead evidence in the absence of such reservation of right.

On the other hand, learned counsel for the respondent submitted that the earlier application was got dismissal as withdrawn at that stage because there was no such evidence led by the defendant, at that stage, in respect of issue No. 3, onus of which was on the defendant herself. Issue No. 3 is as under:-

“Whether the alleged agreement is forged and fabricated ?OPD”

I have considered the arguments raised by both the sides.

Evidently, issue No.1 was in the context of validity of agreement to sell and the entitlement of the plaintiff, vis-a-vis, the suit property on the basis of agreement to sell. The plaintiff has already concluded her evidence on 09.02.2016. The perusal of the aforesaid order would show that the plaintiff has never reserved any right to lead evidence in rebuttal. The perusal of order dated 19.08.2015 would also show that the earlier application filed by the plaintiff was disposed of. The said application was never sought to be revived by way of moving any appropriate application before the Trial Court.

After leading evidence by both the sides, the Trial Court

had virtually reviewed the order dated 19.08.2015 without there being

any proper application filed before it.

In view of ***Surjeet Singh's case (supra)***, no indulgence can be granted in favour of the plaintiff to lead evidence in rebuttal without reservation of such right to lead evidence by the plaintiff. In view of ***Jagdev Singh and others Versus Darshan Singh and others, 2007(1) RCR (Civil) 794 (DB)*** and ***Avtar Singh Versus Baldev Singh, 2015(1) PLR 230***, it can be held that the plaintiff while leading evidence in affirmative did not reserve her right to lead evidence in rebuttal. Issue No.1 is in the context of validity of agreement to sell and entitlement of plaintiff based thereon. The onus of proving issue No. 1 is on the plaintiff herself. In view of the ratio as culled out in ***Jagdev Singh and others*** and ***Avtar Singh's*** cases (supra), the plaintiff cannot be allowed to lead evidence in respect of issue No. 1, the onus of which was on the plaintiff herself.

For the reasons recorded herein above, I deem it appropriate to accept this revision petition. The impugned order is accordingly set aside.

The revision petition is allowed. Normal consequences to follow.

15th May, 2018

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(RAJ MOHAN SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	Yes
<i>Whether reportable</i>	Yes/No