

(101) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5512 of 2017
Date of decision: 28.11.2018

Pardeep Kumar

.... Petitioner

Versus

Dass (Now Deceased) Thr. LRs and others

.... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Satbir Rathore, Advocate for the petitioner.
Mr. Annkur Soni, Advocate for respondent No.1(i) & 2.
Respondent Nos.1 (ii) & (iv) ex parte vide order dated
24.07.2018.
Respondent No.1 (iii) – Service dispensed with vide order dated
17.10.2018.

B.S. WALIA, J. (ORAL)

[1] Challenge in this revision petition is to order dated 01.08.2017 (Annexure P-5) passed by the learned Civil Judge (Jr. Div.), Hoshiarpur dismissing application (Annexure P-3) filed by the petitioner/plaintiff for calling Hand Writing Expert, to take photographs of admitted and disputed signatures of respondent No.1/defendant Dass for comparison of his signatures on the agreement to sell (Ex.P-1) as well as Will and Tabdeel Malkiatnama (Ex.D-1 and Ex.D-2).

[2] Learned counsel for the petitioner contended that the impugned order was legally unsustainable and liable to be set aside and the petitioner granted the opportunity prayed for as the Tabdeel Malkiatnama (Ex.D1) and Will (Ex.D2)] containing admitted signatures of respondent No.1/defendant

were produced by the respondents for the first time in their evidence,

therefore, comparison of the admitted signatures of respondent No.1/defendant on Ex.D1 and Ex.D2 with the signatures on agreement to sell dated 13.04.2007 (Ex.P1) was essential for the just adjudication of the case, besides, no prejudice would be caused to the respondents.

[3] Per contra learned counsel for the respondents contended that the agreement to sell (Ex.P1) as well as Tabdeel Malkiatnama (Ex.D1) had been relied upon by the petitioner/plaintiff in his pleadings and in view of issue No.1 i.e. whether he was entitled to relief of possession by way of specific performance of agreement to sell dated 13.04.2007 (Ex.P1), it was incumbent upon the petitioner/plaintiff to have led evidence in affirmative with regard to agreement to sell (Ex.P1), besides, petitioner/plaintiff ought to have got the signatures of respondent No.1/defendant on Tabdeel Malkiatnama (Ex.D1) compared with signatures on the agreement to sell (Ex.P1), that in case the petitioner/plaintiff wanted to get the signatures of respondent No.1/defendant on Tabdeel Malkiatnama (Ex.D1) examined then even if the original was not on record, production of the same could have been prayed for by moving an appropriate application for comparison with the signatures of respondent No.1/defendant and having failed to do so, it was not open to the petitioner/plaintiff to seek an fresh opportunity for comparison of the signatures of respondent No.1/defendant on Tabdeel Malkiatnama (Ex.D1) original of which was produced as Ex.D1 with the agreement to sell at the rebuttal stage.

[4] Brief facts of the case leading to the filing of the instant revision petition are that the petitioner/plaintiff filed a suit for possession by way of specific performance of agreement dated 13.04.2007 of land measuring 7 kanals Chahi land and 16 kanals of Banjar Qadim and

Nos.55//12/2 (5-4), 13 (8-0), 17 (8-0), 18 (8-0), 1403/1 (28-04), 1881 (31-04), 3195 (2-06), 3198 (2-16) as entered in the Jamabani for the year 2005-06 situated in the area of village Janauri, Tehsil and District Hoshiarpur on payment of the balance sale price/consideration amounting to ₹ 2,40,000/- with a further prayer for directions to respondent No.1/defendant to execute the sale deed and get the same registered in favour of the petitioner/plaintiff as also for directing respondent No.2/defendant to join respondent No.1/defendant for executing the sale deed in favour of the petitioner/plaintiff as per agreement to sell dated 13.04.2007 or in the alternative to decree the suit for recovery of ₹ 2,20,000/- i.e. ₹ 1,10,000/- on account of refund of the earnest money and ₹ 1,10,000/- by way of damages along with future interest @ 18% per annum till final payment.

[5] After the parties had led evidence, at the rebuttal stage, an application was moved at the rebuttal stage for permission to call Hand Writing Expert to take photographs of admitted and disputed signatures of respondent No.1/defendant for comparison on the ground that respondent No.1/defendant had denied the execution of the agreement to sell (Ex.P1) as also his signatures on agreement to sell (Ex.P1) though the petitioner/plaintiff had proved agreement to sell (Ex.P1) through marginal witnesses and writer of the agreement namely Sudesh Chander. It was further pleaded that respondent No.2/defendant claimed Will dated 09.05.2008 having allegedly been executed by respondent No.1/defendant in his favour as also Tabdeel Malkiatnama dated 24.10.2007 (Ex.D1) allegedly executed by respondent No.1/defendant in his favour regarding the property in question. Respondent No.2/defendant admitted the signatures of respondent No.1/defendant on Tabdeel Malkiatnama dated 24.10.2007 and

on the Court file and took up the plea that respondent No.1/defendant had voluntarily executed Tabdeel Malkiatnama (Ex.D1) and put his signatures on the same.

[6] In the aforementioned background, prayer in the application was for permission to produce the Hand Writing Expert for his opinion whether the signatures of respondent No.1/defendant on Ex.P1 i.e. agreement to sell dated 13.04.2017 as well as Ex.D1 i.e. Tabdeel Malkiatnama, besides, Will (Ex.D2) were in one handwriting or not in order to help the Court to arrive at a just and proper decision of the case.

[7] The application was dismissed inter alia on the ground that ample opportunity was available with the petitioner to get the thumb impression of respondent/defendant No.1 compared with some thumb impression from some Finger Print Expert besides, science of handwriting was not an exact science and the same could not be made the sole basis for discarding or accepting the document.

[8] I have considered the submissions of learned counsel for the parties. Although the petitioner/plaintiff cannot be said to have acted promptly in seeking production of the original Tabdeel Malkiatnama (Ex.D1) from respondents/defendants for comparison with the signatures on the agreement to sell (Ex.P1), yet since the original was produced by the respondents/defendants in their evidence and was exhibited as Ex.D1, besides, Will (Ex.D2) allegedly executed by respondent No.1/defendants was also produced by respondent No.2/defendant in his evidence as Ex.D2, therefore, grant of one effective opportunity to the petitioner to examine the Handwriting Expert for comparison of signatures on the documents [i.e. Tabdeel Malkiatnama (Ex.D1) and Will (Ex.D2)] with agreement to sell

(Ex.P1) is allowed in the interest of justice as no prejudice would be caused

to the respondents besides the same would help in the just resolution of the controversy. However, the opportunity is granted subject to payment of costs of ₹ 10,000/- by the petitioner to respondent No.2/defendant. Needless to mention the respondents/defendants would also be provided with appropriate opportunity in respect thereto. However, entire exercise be conducted within two months from the date of receipt of certified copy of this order.

[9] Revision Petition is allowed in aforementioned terms.

(B.S. Walia)
Judge

28.11.2018

amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reasonable : Yes/No.