

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-7282-2017

Date of decision : 23.10.2018

Shamsher Singh

... Petitioner

Versus

Sajjan Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Ved Sangwan, Advocate
for Mr.Babbar Bhan, Advocate
for the petitioner.

None for respondent no.1.

Mr. Sanjiv Gupta, Advocate and
Mr. Vikrant Rana, Advocate
for respondents no.2 to 6.

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioner challenges the orders of the learned trial Court (Additional Civil Judge (Sr.Div.), Charkhi Dadri), dated 21.08.2017, by which the application of the petitioner-plaintiff seeking to lead additional evidence / evidence in rebuttal, was dismissed.

On a perusal of the detailed order, it is seen that the learned trial Court has observed that the suit filed by the petitioner and his co-plaintiffs is one seeking rendition of accounts and for setting aside the sale deed dated 24.06.2010, with a consequential relief of permanent injunction also sought against the defendants (respondents herein).

Issues in the suit were settled on 28.03.2011, after which the plaintiffs availed 44 opportunities for concluding their evidence over a

period of more than 2 years. They finally concluded their evidence on

04.02.2016, with the evidence of the defendants having been concluded on 22.05.2017 and the case fixed for hearing or for evidence in rebuttal on 12.07.2017, when the application was filed.

Vide the said application the petitioner (plaintiff) sought that the daily diary and other documents on which the signatures of defendant no.1 were present, which he denied while appearing as DW-18, be produced along with other documents, to enable the petitioner to get them verified and to lead evidence on that.

However, the learned trial Court noticed that in the written statement filed by defendant no.1 on 06.01.2011, he had categorically denied even the existence of any business partnership between the parties, further denying the execution of any affidavit dated 18.01.2006 (the date erroneously shown to be 18.01.2016 the date as per learned counsel).

Yet further, the trial Court noticed that in fact the writing which was contended to be a signature, was actually initials, and therefore, with the defendants having denied the partnership itself as also the affidavit, if the contention of the petitioner-plaintiff was that the partnership was actually in existence, to prove such partnership he should have led primary evidence in that regard.

Thus, holding that the plaintiff had availed of far too many opportunities (44) to conclude his evidence and had moved the application at the fag end of the trial, the application was dismissed.

It was observed by this Court at the time when notice of motion was issued in this petition on November 06, 2017, that the contention of learned counsel for the petitioner had been that defendant no.1 had denied the existence of the partnership, and also that he had never executed any

affidavit dated 18.01.2006. The final order to be passed by the trial Court had been stayed at that stage.

On the last date of hearing, i.e. October 05, 2018, learned counsel for the petitioner had contended that as a matter of fact all documents pertaining to the partnership firm were in possession of the defendant and a daily diary record was produced by the witness summoned by the Court, i.e. Dharam Chand PW-13, and was not one produced by the plaintiff.

Today, he has corrected himself to say that the said witness was a witness listed by the plaintiffs themselves.

He has however drawn attention of this Court to the testimony of the respondent- defendant no.1, Sajjan Kumar, DW-18, from where he points to the fact that the said witness admitted to his signatures on the partnership deed, Ex.P6, but denied that the deed itself was written in his presence.

Even that being so, but with the categorical contention of the said respondent-defendant in his written statement itself having been that actually no partnership deed ever came into existence between the parties, I do not see the purpose of evidence in rebuttal being led at this stage, when such evidence was to be led by the petitioners-plaintiff by way of primary evidence itself, further in the face of the fact that at least the signatures on the partnership deed, as per the testimony of the first respondent-defendant, have not been denied.

Mr. Gupta, learned counsel for the respondent, submits that the said document was a duly exhibited one.

If that be so, then with the partnership deed and the affidavit

being documents as had been exhibited by the plaintiffs themselves, I do not see why evidence with regard to the signatures on those documents could not be led in more than 2 years that the petitioner and his co-plaintiffs had opportunity to do so, rather than attempting to lead such evidence now at this stage in rebuttal; especially in view of the testimony of the respondent admitting his signatures on the partnership deed, (though denying the deed itself as having been prepared in his presence).

Thus, there would be no need in any case to verify these signatures. Further, as observed by the trial Court, the writing on the diaries, as put up by the plaintiffs, being in the form of initials only and not a signature, I see no reason for further delaying the trial by allowing rebuttal evidence in the form of a handwriting expert to be produced at this stage, as should have been produced at the first stage in any case by the plaintiffs.

Mr. Gupta has also submitted that the petitioner, though, a co-plaintiff with others, is not even shown as a partner in the partnership deed relied upon, and those who claim to be such partners, have not sought to prove any documents now.

Consequently, finding no merit in the petition, it is dismissed.

However, nothing stated hereinabove shall be taken to be an observation on the merits of the case for or against the parties, which naturally would be gone into by the trial Court wholly on the basis of evidence led before it.

(AMOL RATTAN SINGH)
JUDGE

October 23, 2018.

D.K.

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No