

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

Civil Revision No.7713 of 2016 (O&M)

Date of Decision: October 29, 2018

Karnail Singh

...Petitioner

Versus

Ram Kumar and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Vivek Goyal, Advocate for
the petitioner.

Mr.Arora Vishwas Kumar, Advocate
for the respondents.

HARINDER SINGH SIDHU, J.

The petitioner – defendant No.1 has filed the present revision petition impugning the order dated 3.11.2016 of the Civil Judge (Junior Division), Kurukshetra, whereby, the application filed by respondent No.1 – the plaintiff for permission to examine the hand-writing expert in rebuttal was allowed.

Respondent No.1 – plaintiff has filed a suit for permanent injunction for restraining the defendants not to interfere in the construction work and installation of doors and window in the *gali* in dispute and further that the defendants be restrained from encroaching upon the *gali* in any manner.

It was pleaded that there was a *gali sare-e-am* between the houses

house after demolishing the old house and he is to instal the doors and windows in the said *gali* but the defendants were restraining him from installing the said doors and windows in the *gali*. In paragraph 5 of the plaint, it was specifically stated that the dispute about the said *gali* also arose between the father of the plaintiff and defendant No.1 and it was compromised with the intervention of the Panchayat. In the compromise deed, it was agreed that the said *gali* would remain intact and both the parties would use the same and no party would encroach upon the said *gali*.

In the written statement, the defendants in response to the aforesaid averment, stated that no compromise was ever entered into between the plaintiff and the defendants. It was their case that the alleged compromise is totally wrong, false and concocted and not binding on the rights of the defendants. It was averred that there exists no *gali*. Rather it is courtyard of the defendants.

On the pleadings of the parties, issue No.1 was framed as under:-

“1. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for? OPP”

After the defendants had led their evidence, the plaintiff filed an application (Annexure P-4) for permission to examine finger-print and handwriting expert in his rebuttal evidence. In the application he stated that defendant No.1 in his reply to paragraph 5 of the plaint had merely stated that no compromise had been arrived at between the parties, but it was not said that the compromise did not bear his signatures. It was only in his evidence that defendant No.1 denied his signatures on the compromise. The

defendant had not produced any hand-writing expert to prove that the signatures on the compromise were not genuine. Accordingly, it was prayed that the plaintiff be granted permission for inspection and taking photographs of questioned and standard signatures by the document expert for comparison of the same. It was pleaded that the evidence of the fingerprint and hand-writing expert was necessary for proper adjudication of the case. The said application has been allowed by the impugned order.

Learned counsel for the petitioner-defendant No.1 argued that the onus to prove issue No.1 was on the plaintiff. Once, he had led evidence in the affirmative without reserving a right for rebuttal evidence, he cannot be permitted to lead evidence in rebuttal. Reliance has been placed on **Mam Raj vs. Raghbiri (P&H) 2014(62) RCR (Civil) 819**, **Sanjay vs. Shakuntla Devi and others (P&H) 2015(4) RCR(Civil) 686**, **Manjit Kaur vs. Surjit Singh (P&H) 2016(2) RCR(Civil) 686** and **Ajmer Singh vs. Gurmit Singh (P&H) 2017(2) PLR 853**.

Learned counsel for the respondent-plaintiff on the other hand contended that it is only at the time of cross-examination of defendant No.1 that he specifically denied his signatures on the compromise. In view thereof, the plaintiff had a right to lead evidence to rebut the same and hence his application had been rightly allowed.

Having heard learned counsel for the parties, I find no merit in the submissions made on behalf of the respondent – plaintiff.

In his written statement the defendant had denied the execution of the compromise deed. The onus to prove issue No. 1 was on the plaintiff for which he has already led evidence and closed the same, without examining

the hand-writing expert. While closing the evidence he did not reserve right to lead evidence in rebuttal in respect of this issue. Next was the turn of the defendant to lead evidence, when he, while appearing as his own witness denied his signatures on the compromise deed. It was at this stage, that the plaintiff – respondent filed the application for examining the finger-print and hand-writing expert in rebuttal.

In Surjit Singh and others Vs. Jagtar Singh and others 2007(1) 537, a Division Bench of this Court while interpreting Order 18 Rule 3 CPC has held that the plaintiff had no right to lead evidence in rebuttal on an issue, the onus whereof was on the plaintiff. This view has been consistently followed.

Accordingly, the petition is allowed. The impugned order dated 3.11.2016 permitting the plaintiff – petitioner to examine the handwriting expert in rebuttal is set aside.

October 29, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No