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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.4515 of 2018 (O&M)
Date of Decision: 30.04.2019

Pawan Kumar
Vs
Fulla Devi

.....Petitioner

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioner.

Ms. Khushbir K. Bhullar, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 16.05.2018 passed by Addl. Civil Judge (Sr. Divn.) Batala vide which the application filed by the plaintiff/petitioner for permission to cross-examine Fingerprint Expert, Fingerprint Bureau Phillaur on the report dated 24.11.2017 was dismissed.

[2]. Plaintiff filed a suit for specific performance on the basis of agreement to sell dated 10.04.2012. Defendant/respondent contested the suit on the premise that the agreement to sell does not bear thumb impressions of the defendant and the document, if any in existence is false and fabricated. The suit was contested on other grounds as well.

[3]. Plaintiff himself filed an application under Section 151

CPC for direction to the defendant to appear in Court personally and give her thumb impressions for comparison with the agreement to sell from handwriting and fingerprint expert.

[4]. In order to arrive at just decision, the trial Court held that the thumb impressions of the defendant was required to be proved by way of comparison of the specimen thumb impressions of the defendant with thumb impressions appearing on the agreement to sell dated 10.04.2012. The Court was of the opinion that the thumb impressions of the defendant be compared from the Government Laboratory i.e. CFSL, Chandigarh. In view of that the application was allowed vide order dated 26.08.2015 passed by the Addl. Civil Judge (Sr. Divn.) Batala, subject to the condition that all the expenses for comparison of thumb impression of the defendant be borne by the plaintiff to be paid to the CFSL Chandigarh. Thereafter, needful was done in the context of comparison and giving report by the Director, Finger Print Bureau, Phillaur. The opinion is admissible in evidence under Section 293 of Cr.P.C.

[5]. Thereafter, the application was filed by the plaintiff for cross-examination of the witness Rajbir Kaur i.e. Fingerprint Expert, Fingerprint Bureau, Phillaur on the report dated 24.11.2017. The said application was contested by the defendant on the premise that the report has evidenced that the

agreement to sell does not bear thumb impressions of the defendant. The Expert was never examined in examination-in-chief. Right to cross-examine begins as per Section 138 of the Indian Evidence Act only after the witness examined in examination-in-chief. The trial Court dismissed the application vide the impugned order and adjourned the case for rebuttal evidence and arguments.

[6]. At the time of issuance of notice of motion on 18.07.2017, following order was passed by this Court:-

*“Learned counsel for the petitioner relies upon **Parappa and others Vs. Bhimappa and another, 2008(25) RCR (Civil) 635 (Karnatka)** to contend that tendering of report of finger print expert and finger print bureau, amounts to examination-in-chief of the expert in view of Order 26 Rule 10-A CPC and the party disputing the correctness of said report has a right to summon the expert for cross examination.*

Notice of motion for 01.10.2018.

In the meanwhile, passing of final order shall remain stayed.”

[7]. Learned counsel for the petitioner sought to address the arguments on the strength of **Parappa and others vs. Bhimappa and another, 2008(25) R.C.R. (Civil) 635** and contended that the report of the Expert amounts to examination-in-chief of the Expert in view of Order 26 Rule 10-A, CPC and the party disputing the correctness of the report has a right to summon the expert for cross-examination.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. Perusal of the aforecited judgment would show that the author of the report has to be examined on oath and an opportunity must be given to the accused to cross-examine the said expert witness in respect of correctness of the report. Only thereafter, such report becomes admissible. When the Expert is appointed as Commissioner by the Court in a civil case at the instance of one of the party, the Court may issue commission to such Expert for the purpose of elucidating the matter in issue, by directing him to make such investigation and to report thereon. The report of such a Commissioner submitted on the orders of the Court stands on different footing than the report of an Expert prepared at the instance of either of the parties to the suit. The Expert becomes a Commissioner only when the Court appoints him under Order 26 CPC, otherwise the Expert is only a witness for prosecution or for the party, who got him appointed in civil case.

[10]. Order 26 Rule 10(2) CPC provides that the order shall apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Order 26 Rule 9 CPC. Rule 9 CPC provides for commissions to make local investigations in any suit in which the Court deems

a local investigation to be requisite or proper for the purpose of elucidating any order in dispute, or of ascertaining the market value of any property, or the amount of any *mesne* profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court, provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules. Perusal of Rules 9 and 10(2) CPC would show that the provisions are in respect of local investigations and are not in the context of Expert opinion by the Handwriting and Fingerpring Expert.

[11]. Section 45 of the Indian Evidence Act provides that for opinions of the Expert, when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts.

[12]. Under Section 138 of the Indian Evidence Act, such witness shall be first examined in chief, then the aggrieved party, may cross examine him.

[13]. In view of aforesaid legal position, the witness has to be first examined in-chief and then only the witness can be cross-examined by the concerned party i.e. the party calling the witness, if so desires to cross-examine him/her. Since the witness was never appointed under Order 26 Rule 9 CPC, therefore, the witness cannot be termed to be a Commissioner for the applicability of ratio of **Parappa and others's** case (supra), otherwise the Expert is only a witness and Sections 45 and 138 of the Indian Evidence Act would apply. Since the witness was never examined in-chief, therefore, question of cross-examination does not arise. The appointment of Expert witness in view of order dated 26.08.2015 would show that she was never appointed under Order 26 Rule 10(2) CPC. The application was simply filed by the plaintiff himself under Section 151 CPC for direction to the defendant to appear in the Court and give her thumb impressions for necessary comparison.

[14]. For the reasons recorded hereinabove, I find no error of jurisdiction in the impugned orders passed by the trial Court. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

April 30, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No