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

**Civil Revision No.4689 of 2017
Date of Decision: 04.02.2019**

Hardeep Singh

.....Petitioner

Vs

Avtar Singh and another

....Respondents

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

Present: Mr. Harsh Bunker, Advocate
for the petitioner.

Mr. B.D. Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 03.07.2017 passed by the Civil Judge (Sr. Divn.) NRI Court, Jalandhar, whereby the application filed by the petitioner for producing handwriting expert for comparison of signature of respondent No.1 on the agreement to sell with his standard signature on the registered transfer deed dated 20.03.2015 by way of additional evidence was dismissed.

[2]. Petitioner/plaintiff filed a suit for specific performance on the basis of agreement to sell dated 06.08.2014 entered

between the plaintiff and defendant No.1 in respect of the suit property.

[3]. The defendants contested the suit by way of filing written statement, wherein they have denied execution of the agreement to sell between the plaintiff and defendant No.1. In preliminary objections No.1 and 2, the defendants pleaded that no agreement have ever been executed between the plaintiff and the defendants. The plaintiff has not come to the Court with clean hands and has attempted to mislead the Court to get *ex parte* orders. Apart from the alleged agreement placed on record of June 2014, plaintiff and his father had been showing another agreement to sell and had been threatening that they will use that document to file suit in the Court. Plaintiff had been pressurizing to sell out the land of defendant No.1 to the plaintiff which falls adjoining to the house of the plaintiff.

[4]. In para nos.2 and 3 of the written statement filed by the defendants on merits, the following averments were made:-

“2. *That para no.2 of the plaint is wrong and denied, except the fact that previously the land was owned by defendant no.1. It is wrong and denied that defendant no.1 has entered into agreement to sell with plaintiff on 06.08.2014 or at any other point of time. It is also wrong and denied that the land of 1 Kanal measuring 207 Sq. Ft. was agreed to be sold to the plaintiff. It is wrong and denied that sale consideration was fixed at Rs.16 Lacs or any other amount. It is wrong and*

denied that defendant No.1 ever agreed to sell his land to the plaintiff. It is worth mentioning here that the market value of the land is much higher than has been quoted by the plaintiff in the corresponding paragraph of the plaint. All the annexure documents are wrong and denied. Alleged agreement to sell dated 06.08.2014 is act of fraud. Site plan attached and other wrong documents are wrong and denied.

3. *That para no.3 of the plaint is wrong and denied. It is wrong and denied that there was an agreement dated 06.08.2014. It is further wrong and denied that Rs.5 Lac or any part thereof or any other amount was ever paid to the defendant no.1 by the plaintiff as earnest money or for any other purpose. It is wrong and denied that defendant had executed any agreement to sell in presence of any witness. It is wrong and denied that last date of execution of alleged agreement to sell was fixed as 10.06.2015. It is further wrong and denied that possession was given to the plaintiff. It is also wrong and denied that plaintiff is in the possession of the same. It is wrong and denied that tube well is installed in the said area by the plaintiff for supply of the water to the house of his father, it is worth mentioning here that defendant no.1 had small holding near the house of the plaintiff (disputed property). To irrigate that area defendant no.1 had installed bore well to irrigate that area with use of generator. It is worth mentioning here that photographs filed by the plaintiff are falsely generated one. The true photographs has been placed on record by the defendants at the time of filing of the power of attorney on 19.06.2015. Those may kindly be considered as document placed on record alongwith written statement. It is wrong and denied that plaintiff is in possession of the said land. It is also worth mentioning here that even as per the settle law without*

registration of document pertaining to agreement to sell, no ground of possession of the plaintiff can be entertain.”

[5]. Issues were framed on 11.08.2015. Issue No.1 was to the following effect:-

“1. Whether the plaintiff is entitled for Specific Performance of the agreement to sell dated 06.08.2014? OPP”

[6]. No issue for rebuttal was framed. Plaintiff and defendants have already concluded their evidence. Plaintiff has not led any evidence of expert witness in his affirmative evidence. The application for additional evidence came to be filed after the statement of DW-1 Avtar Singh, when he stated following facts in para No.10 of his examination-in-chief:-

“10. That the plaintiff or Baldev had no funds upon him for the purpose of execution of sale deed on the basis of alleged agreement to sell.”

[7]. In the cross-examination, the witness DW-1 Avtar Singh stated that it is wrong to suggest that he put his signature and thumb impression on agreement dated 06.08.2014 in the presence of the marginal witnesses of the agreement. It is wrong to suggest that just to avoid the performance of agreement to sell dated 06.08.2014, he executed the transfer deed dated 20.03.2015 in favour of his wife defendant No.2. He further stated that Jasvir Kaur was residing with him. He never received any amount from Jasvir Kaur at the time of execution

of transfer deed dated 20.03.2015. He has no property in his name. He used to cultivate the entire land himself and there was no specific reason to transfer the entire property in favour of his legal heir. He also denied the suggestion that he has transferred the property in question to avoid consequences of agreement to sell dated 06.08.2014.

[8]. In view of aforesaid, learned counsel for the petitioner submitted that in the entire written statement, the signature on the agreement to sell were not specifically denied by the defendants. The application was filed only for cross-examination of DW-1 wherein he denied the signature on the agreement to sell. Since there was no rebuttal issue involved, therefore, the plaintiff instead of leading any evidence in rebuttal, filed an application for leading expert evidence by way of additional evidence.

[9]. Learned counsel further contended that ratio of **Surjit Singh and others vs. Jagtar Singh and others, 2007 (1) RCR (Civil) 537 DB; Jagdev Singh and others vs. Darshan Singh and others, 2007 (1) RCR (Civil) 794** and **Avtar Singh vs. Baldev Singh, 2015 (1) PLR 230** would not apply in the present case as there was no denial in respect of signature on the agreement to sell by the defendants in their written statement. It was only while appearing as DW-1, the signatures

were denied by the defendant Avtar Singh. In view of above, the plaintiff could have right to lead evidence in rebuttal on an issue the onus of which was on the plaintiff himself. The defendant introduced plea of not putting signature only in the statement while appearing as DW-1 without taking any defence in the written statement. Therefore, in view of decision of this Court in ***CR No.5509 of 2015*** titled '***Charan Singh and another vs. M/s Vikram Electric Equipment Pvt. Ltd. and another***' vide order dated 26.09.2018, the aforesaid fact would make the present case distinct and the differentia is of the fact that the signatures were not denied by the defendants in the written statement.

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

[11]. Perusal of the written statement filed by the defendants would show that the defendants have denied the very execution of agreement repeatedly in preliminary objections as well as in para nos.2 and 3 of the written statement. Even in para No.5 of the affidavit of Avtar Singh DW-1 in examination-in-chief, the witness has specifically stated that at no point of time the defendants entered into agreement to sell, nor he has received any amount of Rs.5 lakhs or any part thereof towards alleged sale consideration of Rs.16 lakhs. The said agreement was pleaded to be a forged document as the defendant never

agreed to sell his land. For ready reference para No.4 of the affidavit reads as under:-

“4. That at no point of time deponent entered into any agreement to sell or Ex.P-4. Deponent never accepted Rs.5,00,000/- or any part whereof to wards alleged sale consideration of Rs.16,00,000/- as has been pleaded by the plaintiff. The said agreement to sell is forged document. The deponent never agrees to sell his land as has been detailed by the plaintiff in the head note of the plaint. Market value of the said land is much higher.”

[12]. Once the defendants have specifically denied very execution of agreement to sell, the same includes denial to the signatures as well. Issue No.1 obligated the plaintiff to lead evidence in affirmative. No such evidence was led. The ratio of **Charan Singh's case** (supra) is not attracted to the present case as in the said case the defendant introduced a totally new plea without taking the same in the written statement. In such eventuality, plaintiff was held entitled to lead evidence in rebuttal by examining the expert evidence because at the stage of leading affirmative evidence, the plaintiff was not in the knowledge of such evidence which was led by the defendant only in their defence evidence without making any plea in the written statement.

[13]. In the instant case, the plea raised in the written statement was catagoric enough by denying the plaintiff to lead

evidence in rebuttal or by way of additional evidence as the plaintiff cannot be permitted to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself. The ratios of Surjit Singh and others; Jagdev Singh and others and Avtar Singh's cases (supra) fully applies to the instant case. Once the plaintiff is not entitled to lead evidence in rebuttal, the application to seek same relief by way of additional evidence cannot be permitted in view of facts and circumstances of the case.

[14]. For the reasons recorded hereinabove, I find no merit in this revision petition. The same is accordingly dismissed.

February 04, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No