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

**Civil Revision No.2007 of 2019 (O&M)
Date of Decision: 27.03.2019**

Amarjit SinghPetitioner
Vs
Pishora Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Siao, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 07.03.2019 passed by the Civil Judge (Jr. Divn.) Malerkotla, vide which the application filed by the petitioner/plaintiff for seeking permission to examine the Handwriting and Fingerprint Expert in rebuttal evidence was dismissed.

[2]. Brief facts are that the plaintiff/petitioner filed a suit for specific performance of agreement to sell dated 05.06.1994 by way of execution and registration of sale deed regarding suit land measuring 16 *Kanals* 17 *Marlas* as mentioned in the headnote of the plaint. Plaintiff also laid challenge to the judgment and decree dated 09.12.2003 passed by the Civil Judge (Jr. Divn.) Malerkotla. However, the matter was compromised on 25.02.2004 and the same was attached in

Execution No.25. Permanent injunction was also prayed restraining the defendants from alienating the suit land in any manner.

[3]. In the aforesaid suit, an application was filed by the petitioner to examine the Handwriting and Fingerprint Expert in rebuttal evidence which was dismissed by the trial Court vide the impugned order on the ground that the documents mentioned by the petitioner in the application were within the knowledge of the petitioner since the date of filing of the suit and he cannot be allowed to fill lacuna by way of leading evidence in rebuttal.

[4]. Learned counsel for the petitioner submitted that the petitioner came to know that Jarnail Singh (deceased) had filed a Civil Suit No.289 for specific performance against Sheri on the basis of agreement to sell dated 13.08.1994 with regard to the land in dispute and got the suit decreed on 09.12.2003. Thereafter execution was filed by the legal representatives of Jarnail Singh. During execution a compromise dated 25.02.2004 was made between Smt. Premi widow of Sheri and respondents No.7 i.e. legal representative of Jarnail Singh that money received by Sheri from Jarnail Singh was returned to respondent No.7, which was reduced into writing between them and the same was attached in the Execution No.25. However, during

cross-examination, DW-1 Gagan Deep Singh denied his signatures on the above said compromise dated 25.02.2004.

[5]. Learned counsel further submitted that the agreement to sell dated 05.06.1994 bears thumb impressions of Sheri son of Lallu, but in the written statement filed by the defendants they have denied the execution of agreement to sell dated 05.06.1994. Petitioner wants to examine the Handwriting and Fingerprint Expert in order to prove the thumb impressions of Sheri.

[6]. I have considered the submissions made by learned counsel for the petitioner.

[7]. Petitioner/plaintiff seeks to lead expert evidence in rebuttal in respect of an issue the onus of which was on the plaintiff himself. In the written statement, the defendants have denied execution of agreement to sell dated 05.06.1994. No evidence was led by the petitioner in his affirmative evidence. It was obligatory on the part of the petitioner to lead evidence in affirmative in the light of plea of denial raised by the defendants.

[8]. Further the submissions made by learned counsel on the basis of compromise dated 25.02.2004 cannot be appreciated because the suit filed by the petitioner is based on agreement to sell dated 05.06.1994 and not on the basis of compromise. The said compromise has no relevance in order to

prove agreement to sell.

[9]. In view 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**, the plaintiff cannot lead evidence in rebuttal in order to discharge the onus which was fastened upon him at the time of leading evidence in affirmative. Handwriting expert cannot be allowed to be examined in rebuttal.

[10]. The case laws relied upon by learned counsel cannot be of any help to the petitioner. In **Karanjeet Singh vs. Amarpreet Singh, 2018(3) PLR 71**, the legal positions as held by the Division Bench of this Court in cases of **Surjit Singh and others, Jagdev Singh and others** and **Avtar Singh's** (supra) have not been noticed, nor any factual position as exists in the present case, could be pointed out by the learned counsel in order to seek any divergence from the law laid down by the Division Bench of this Court in the aforesaid cases.

[11]. Similarly in **Gurpal Singh vs. Gurmej Singh, 2018(1) Law Herald 311**, the Court had no occasion to consider the aforesaid legal position in view of of the facts and circumstances of that case. Perusal of the aforesaid case would show that the revision petition was dismissed in *limine* and the order passed

by the trial Court was affirmed.

[12]. In **Baljit Singh vs. Manjit Singh and others, 2013(23) R.C.R. (Civil) 167**, the facts were on different footing. Defendant No.1 in the cited case had introduced affidavit at the stage of evidence, without mentioning the same in the pleadings. In view of aforesaid development, the plaintiff had no occasion to lead evidence in affirmative as he could not have thought of examining Handwriting Expert at the stage of leading evidence in affirmative to prove alleged signature of the plaintiff on the said affidavit. The affidavit was completely beyond the pleadings in the plaint and in view of those circumstances, plaintiff was held entitled to examine Handwriting Expert in rebuttal to the evidence led by defendant No.1, who had introduced affidavit beyond his pleadings at the stage of his evidence. The case of **Surjit Singh and others** (supra) was relied and in view of those facts, it was held that the plaintiff had a right to lead evidence in rebuttal as he had no opportunity to counter the plea of affidavit introduced by defendant No.1 for the first time in his evidence without mentioning the same in the written statement.

[13]. In **Sukhwinder Pal Singh vs. Bhupinder Kaur, 2014(33) R.C.R. (Civil) 828**, the facts were different, rather it was held that the plaintiff cannot lead evidence in rebuttal,

merely because defendant has examined Handwriting Expert in his evidence. The application filed by the plaintiff for leading evidence in rebuttal was allowed by the trial Court and the said order was set aside in the revision petition by the High Court. Para No.6 of the judgment reads as under:-

“6. Thus, the onus to prove issue No.2 was on the respondent-plaintiff. Since the petitioner had specifically denied his signatures on the agreement to sell in question in his written statement, respondent-plaintiff was liable to lead all the relevant evidence while leading her evidence in the affirmative to establish that the agreement to sell in question had been executed by the petitioner in her favour. However, while leading her evidence in the affirmative, respondent had failed to examine any handwriting expert. Merely because the petitioner had examined a handwriting expert while leading his evidence would not give right to the respondent to examine a handwriting expert while leading her evidence in rebuttal. Plaintiff cannot be allowed to lead evidence in the affirmative qua an issue with regard to which onus was on the plaintiffs to prove the same. In the facts and circumstances of the present case, the trial court erred in allowing the application moved by the respondent for permission to examine handwriting expert while leading her evidence in rebuttal.”

[14]. In view of aforesaid position, there cannot be any escape from the fact that the plaintiff having noticed the plea of the defendants in the written statement and having omitted to lead evidence in affirmative, cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself. In view of aforesaid legal position, I

do not see any justification to interfere in the impugned order passed by the trial Court. This revision petition is accordingly dismissed.

[15]. Since the revision petition has been dismissed on merits, therefore, there is no need to decide the application for impleading LR's of deceased Bholi @ Vasdev Singh. The same is disposed of accordingly.

March 27, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No