

CR-9052-2017 (O&M)

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

CR-9052-2017 (O&M)

Date of decision : 20.05.2019

Baldeep Singh

... Petitioner

Versus

Daljit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. ADS Jattana, Advocate
for the petitioner.

Mr. Sagar Aggarwal, Advocate
for respondent No.1.

Mr. N.S. Vashist, Advocate
for respondent No.4.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 15.12.2017 (Annexure P-9), whereby the application for taking the assistance of an Expert to examine the writing dated 08.11.2009, has been dismissed.

The petitioner-plaintiff sought the declaration having no liability to pay the loan amount borrowed by Darshan Singh, his father, by mortgaging the land measuring 15 bighas, in view of the writing *ibid*. It was alleged that Darshan Singh died on 03.06.2007. The entire equipment and tractor were taken by the defendant Nos.1 and 2. The defendants, in the aforementioned case, admitted the factum of the loan obtained by Darshan

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Singh, stated to be for entire family. In paragraph 4 of the written statement, it was alleged that the writing dated 08.11.2009 was false, forged and fabricated document.

The trial Court framed the following issues:-

1. *Whether the plaintiff is entitled to declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP*
3. *Whether the suit is not legally maintainable? OPD | (Defendant No.1.)*
4. *Whether the suit of the plaintiff is barred u/o 2 Rule 2 CPC ? OPD (Defendant No.1).*
5. *Whether the suit is time barred? OPD (Defendant No.1).*
6. *Whether the plaintiff has not come to the court with clean hands? OPD (Defendant No.1).*
7. *Whether the suit is false and frivolous? OPD (Defendant No.1)*
8. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD (Defendant No.1)*
9. *Whether the present suit has been filed by plaintiff in connivance with defendant No.1 and 2? OPD (Defendant No.4).*
10. *Whether no notice was served upon the defendant No.2? OPD (Defendant No.4).*
11. *Whether this Court has no jurisdiction to try the present suit? OPD*
12. *Relief.*

Both the parties led extensive evidence in support of their respective cases.

When the case was fixed for rebuttal evidence, the aforementioned application, as noticed above, was filed, which has been

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dismissed.

Mr. Jattana, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the petitioner-plaintiff closed the evidence by suffering the statement on 18.07.2016. The defendants examined an Expert, in their evidence, therefore, an occasion arose, for, witnesses of the writing had already been examined by leading the evidence in affirmative. There is no emphatical denial with regard to the signatures on the writing except stating it to be forged and fabricated document, so, it cannot be said to be that onus solely laid upon the plaintiff by leading the evidence in affirmative.

Per contra, Mr. Sagar Aggarwal and Mr. N.S. Vashist, learned counsel appearing on behalf of respondent No.1 and 4, respectively, submitted that there is no rebuttal issue clothing the petitioner to take the assistance of the Expert by way of additional evidence. It is an attempt to circumvent the provisions of Order 18 Rule 2 of the Code of Civil Procedure, which is not permissible in law. In support of their contentions, relies upon judgment dated 01.02.2019 passed in **CR No.757 of 2019** titled as **“Lekh Raj V/s Ram Piari and others”**.

I have heard learned counsel for the parties and appraised the paper book.

From the perusal of issues, as noticed above and the stand taken in the written statement, it is evident that there is no issue with regard to the writing being forged and fabricated. The parties were alive to the situation. Equally so, it cannot be ignored that even if, there is no issue framed, the parties, can be permitted to lead evidence. For the sake of brevity, para No.4 of the written statement reads as under:-

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"4. That para No.4 of the plaint is correct to the extent of death of Darshan Singh. Rest of the contents of this para of the plaint as stated are wrong and therefore, denied. The tractor and the value of the house was accessed by the relatives on 30-3-2012 and a writing to that effect was also prepared. Vide that settlement the answering defendant had not taken the tractor. The tractor was decided to be taken by defendant No.2 and to pay the value thereof to the answering defendant by him along with the amount of repairs. So there is no liability of the answering defendant regarding the house as well as tractor otherwise in view of the settlement dated 30-3-2012. Copy of which is attached herewith. No writing or settlement took place on 8-11-2009 as alleged. There was a previous litigation regarding the houses between the plaintiff and the defendants No.1 and 2, in which this writing no where finds mentioned. Had there been any such writing, the same might have been found mentioned therein. It is also worth mentioning here that had there been any truth regarding the facts the plaintiff might have claimed the same in the previous suit, which was filed by him in joint with defendant No.2 against the answering defendant. The alleged writing dated 8-11-2009 is false, forged and fabricated one."

The entire tenor and mode of the aforementioned para, do not state that the defendant did not sign the writing, but it was stated to be forged and fabricated, yet the trial Court did not frame the issue. The plaintiff has already examined the witnesses as well as the scribe, the occasion arose to move the application only, when the defendant examined the Expert. In such circumstances, the Court below should not have applied the provisions of Order 18 Rule 3 of CPC, so harshly, in the adjudication of the *lis*. No doubt, in the absence of rebuttal issue, the parties particularly the plaintiff cannot, at the drop of a hat, seek indulgence of the Court for

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leading the additional evidence to fill up the lacuna, but in the peculiar facts and circumstances, as noticed above, this situation was not envisioned in the judgment referred to above, particularly one **Lekh Raj's case** (supra), wherein the issue was specifically framed, but no evidence was led in affirmative. All these factors have not been taken into consideration.

Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law being infirm and perverse and the same is hereby set aside. Resultantly, the present revision petition stands allowed, subject to the payment of costs of ₹5,000/-, which shall be condition precedent.

However, this will not prevent the defendants to also lead evidence in rebuttal to what the petitioner-plaintiff intends to lead by way of additional evidence.

20.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**