

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

CR-5086-2017 (O&M)

Date of decision : 08.01.2020

Gurdip Singh

...Petitioner

Versus

Harpinder Singh Gill

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Akash Jindal, Advocate for the petitioner.

Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner has filed this revision petition against the order passed by the learned Additional Civil Judge (Senior Division), Hoshiarpur dated 08.05.2017 dismissing application filed by the plaintiff for issuance of direction to the defendant-Harpinder Singh to give his specimen writing in the Court to enable comparison of writing and signatures on the endorsement of the agreement to sell dated 23.05.2012.

Plaintiff has filed the suit for specific performance of the agreement to sell dated 23.05.2012. It is pleaded case of the plaintiff that pursuant to the agreement to sell for land measuring 80 kanals, the entire

sale consideration of ₹85,50,000/- was received and he was delivered possession.

On the other hand, defendant-respondent denies the execution of the agreement to sell and receipt of the sale consideration.

Plaintiff, in order to prove its case, led evidence in affirmative by examining himself, the deed writer, marginal witness of the agreement to sell apart from other witnesses. Defendant also led his evidence. When the case was at the stage of rebuttal and arguments, an application was moved with the prayer noted above. Application has been dismissed by the Court on two grounds. Firstly, the plaintiff has no right to lead affirmative evidence in rebuttal and secondly, the plaintiff has failed to make out a case for additional evidence as the evidence sought to be now led amounts to filling in lacuna.

As a matter of fact, it must be noticed that the alleged agreement to sell dated 23.05.2012 has a separate endorsement of extension of the target date fixed for performance of the agreement to sell on the reverse side of the second page of the alleged agreement to sell. It is the positive case of the plaintiff-petitioner that by the aforesaid endorsement the target date for execution and registration of the sale deed was extended from 24.09.2012 to 30.07.2013. It is alleged that the aforesaid endorsement is in the handwriting of defendant-respondent. It is signed by the plaintiff as well as one marginal witness.

It has been averred in the application that inadvertently, the plaintiff could not lead sufficient evidence to prove this endorsement

although the defendant had denied execution of the same in the written statement. He submitted that in the interest of justice, the plaintiff-petitioner should be permitted to prove this endorsement.

On the other hand, learned counsel for the respondent has submitted that once the plaintiff was in the knowledge of the fact that execution of the aforesaid endorsement has been specifically disputed by the defendant, therefore, the plaintiff is not entitled to an opportunity as it would result in filling in lacuna.

This Court has considered the submission of the learned Senior Counsels and gone through the paper book.

It is well settled that the rules of procedure are meant to advance cause of justice rather than scuttling it.

In view of the facts and circumstances of the present case particularly when the plaintiff only wants to prove the execution of the endorsement dated 24.09.2012 which is stated to be in the handwriting of the defendant, in the considered view of this Court, learned trial Court erred in refusing permission. Learned trial Court denied the permission by taking a very narrow view. An application for additional evidence is to remove the deficiency, if any, left by the party to the litigation. Provision for additional evidence although stands deleted from the Code of Civil Procedure, however, the Court has power under Section 151 CPC to permit additional evidence in order to do substantive justice between the parties. In the considered view of this Court, this is a fit case where such power ought to be exercised.

Keeping in view the aforesaid facts, application is allowed. The respondent-defendant is directed to give his specimen handwriting before the trial Court and the learned trial Court would permit both the parties to lead further evidence in order to prove or disprove the endorsement.

Keeping in view the fact that the suit is pending since 22.11.2013, learned trial Court is requested to decide the suit expeditiously preferably within a period of 6 months.

In view of the above, the present revision petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No