

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

CR No. 782 of 2017(O&M)

Date of decision: 22.1.2020

Bhagwan Singh Sandhu

.....Petitioner

VERSUS

Sushil Kumar Singla and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. D.S. Malwai, Advocate for the petitioner.

Mr. Sunny K. Singla, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

Challenge in the present petition has been directed against order dated 03.12.2016 passed by the Additional Civil Judge (Senior Division), Dera Bassi whereby application filed by respondent No.1/plaintiff to examine Navdeep Gupta, Document Expert, for examination of agreement dated 31.07.2009 and dissolution deed dated 15.11.2008 has been allowed.

Counsel for the petitioner would argue that earlier the application was filed by respondent No.1/plaintiff for examination of said Navdeep Gupta by way of rebuttal evidence and the same was dismissed vide order dated 24.03.2015. Later, respondent No.1 filed the instant application for adducing additional evidence for examining Sh. Navdeep Gupta in respect of agreement dated 31.07.2009 and dissolution deed dated 15.11.2008 and the same was allowed vide impugned order dated 03.12.2016. It is further argued that since the respondent/plaintiff was well aware of defence raised by the petitioner in his written statement and did

not feel the need to examine Document Expert in respect of agreement of sale, there is no reason for the Court to permit the respondent to examine Sh. Navdeep Gupta, by way of additional evidence.

Counsel representing the respondent/plaintiff would argue that the petitioner, during the course of evidence, produced on record dissolution deed dated 15.11.2008. He made the statement that original document would be produced before the Court as and when so required for the purpose of examination of an expert by the respondent/plaintiff. It is further submitted that later when the Court directed him to produce the original dissolution deed, he made a statement that the original deed has been misplaced and the said statement made by the petitioner shows his mala fide intention to withhold the document. It is further argued that the petitioner examined document expert in respect of agreement to sell and in case the respondent/plaintiff is not permitted to examine his expert by way of additional evidence, it would be of serious consequence.

Counsel for the petitioner, on instructions, would inform that the petitioner would not press into service the dissolution deed dated 15.11.2008 Ex.D1 or evidence adduced in regard to the said document at the time of decision of the case on merits.

Counsel for the respondent/plaintiff, in response to a query, would fairly inform that the petitioner has not denied his signatures on the agreement of sale but raised the plea that his signatures were obtained on blank paper which was later converted into agreement to sell. The respondent/plaintiff never sought examination of expert at an appropriate stage of the proceedings when he was leading evidence. No such plea has been raised by the respondent/plaintiff that despite exercise of due

diligence, he was not in a position to examine the document expert. The mere fact that dissolution deed was produced during the course of evidence or the petitioner had undertaken to produce the original document as and when so directed does not create a ground for the respondent/plaintiff to seek examination of an expert by way of additional evidence particularly in the circumstances that production or non-production of dissolution deed had not created a different situation for him with regard to his obligation to prove agreement to sell, in accordance with law.

The petitioner examined an expert namely Jassy Anand in his evidence. It appears to the Court that since the petitioner examined an expert in his evidence, the respondent tried to examine his expert by way of rebuttal evidence and failing to do so, he filed the instant application to examine the expert by way of additional evidence but without justifiable ground. In this view of the matter, order impugned cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case. In view of statement made by counsel for the petitioner, dissolution deed Ex.D1 or evidence produced to prove the same shall not be taken into consideration at the time of hearing of the case on merits.

JANUARY 22, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no