

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

CR No. 837 of 2020

Date of Decision: 5.2.2020

R.K. Yadav

...Petitioner

Vs.

Dharamraj Singh and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.S. Punia, Advocate for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. Mr. Aayush Gupta, Advocate enters appearance on behalf of contesting respondent No.3 by filing Memorandum of Appearance.

2. The short point involved is that the plaintiff cannot achieve in rebuttal evidence what he could have done while leading evidence in the affirmative. The law on this aspect is long settled.

3. The suit was for specific performance of a contract of sale dated 1.4.2014. The plaintiff ["P"] sought possession of suit property claiming a decree of enforcement of contract. He brought a suit arraying as defendants 1 and 2 (D1 & D2) the proposed vendor with whom he struck the deal as well as a subsequent holder of a sale agreement claiming preferential right of specific performance. This meant that plaintiff had knowledge of sale agreement between D-1 and D-2. Defendant No.1 turned ex-parte as he must have been disinterested in the fate of the suit. D2 filed a written statement contesting the suit by

denying execution of the agreement dated 1.4.2018 (between P1 & D1) by taking a specific plea that the alleged agreement does not bear the signatures of D1 Dharam Raj Singh.

4. The trial court framed a specific issue regarding the execution of the sale agreement between P & D1 if it could hold. The burden of proof was rightly placed on the plaintiff to prove the issue. Plaintiff knew to start with that he was in order to succeed required to lead evidence during his opportunity to dislodge D2's claim in his written statement that the agreement of sale of property was forged as it did not bear the true signatures of seller Dharam Raj Singh/D1. It was D2 who applied for a forensic report of a handwriting expert for comparison of the signatures of Dharam Raj Singh on both the sale agreements i.e. 1.4.2014 and 5.3.2015. That evidence was made available on file.

5. If the plaintiff was diligent he could have applied to the court for production of Dharam Raj Singh and compel him to give his sample signatures for comparison and sought permission of the court to produce his expert evidence to refute the allegations of D2 that the agreement was forged. But no such recourse was taken and the plaintiff before closure of his evidence by court order. D2 has concluded his evidence and the case is ripe for final arguments.

6. Faced with this dilemma, it appears that the plaintiff was advised to move an application for production of handwriting expert

which has been refused by the trial Court by the impugned order dated 21.1.2020 and I am pleased to note that the young Civil Judge, Junior Division has noticed a wide of precedents on all the aspects and has consider the entire issue regarding affirmative and rebuttal evidence and the interplay between them in the light of issues struck and the onus placed on whom the burden lies.

7. In the present case, the burden of proof on the issue was placed on the plaintiff. He has failed to lead evidence in order to rebut the categorical stand of D2 that plaintiff's agreement was a forged and fabricated document. Plaintiff knew from the very beginning the case he had to meet that his sale agreement was alleged to be a forged document. The opportunity he seeks today to bring handwriting expert to court is a lost opportunity which was available to him when he was producing his affirmative evidence. Therefore, he cannot take advantage of the contention that he should be permitted to do what he is prohibited from doing in rebuttal by law of production of evidence as per the Act i.e. is to lead affirmative evidence at the end of the trial mature for final judgment and decree.

8. In view of the short discussion above, I am of opinion that the impugned order is perfectly sound in law especially with the concluding remarks of the learned civil judge holding that:-

“...no rebuttal evidence was warranted qua proof of agreement to sell dated 1.4.2014 from quarters of the plaintiff for, in view of what has been held above, it was upon the

plaintiff to prove it in affirmative, thereby making it their affirmative stand and thus meriting leading of such evidence in the affirmative and not rebuttal.”

9. I wholeheartedly endorse this correct view and dismiss the petition as devoid of merit.

(RAJIV NARAIN RAINA)
JUDGE

5.2.2020
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Whether speaking/reasoned : Yes
Whether reportable : Yes/No