

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

CR No.5543 of 2019

Date of decision: 10th February, 2020

Vikram Pal Singh

... Petitioner

Versus

Malinder Singh @ Mohinder Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ivan S. Khosa, Advocate for the petitioner.

Mr. NPS Kohli, Advocate for the respondents.

FATEH DEEP SINGH, J.

This is a revision petition by Vikram Pal Singh plaintiff wherein he has challenged orders dated 10.07.2019 passed by the Court of learned Civil Judge (Junior Division), Ambala whereby the application for examining handwriting expert moved by the plaintiff stood dismissed.

Heard Mr. Ivan Singh Khosa, Advocate for the petitioner; Mr. N.P.S. Kohli, Advocate on behalf of the respondents and perused the records.

The present petitioner instituted on 05.03.2014 a suit for possession by way of specific performance of the agreement to sell dated 29.12.2011 in respect of the property duly detailed in the head note of the plaint against defendants Malinder Singh alias Mohinder Singh and

others who are respondents before this Court. After affording ample opportunities to lead his evidence and even after the trial Court on 29.05.2019 afforded last opportunity to the plaintiff to complete his evidence, he failed to do so and instead moved an application after cross-examination of PW-6 Amarpal Singh for examining handwriting expert which was dismissed vide impugned findings dated 10.07.2019. That is how the instant revision petition has come about.

Going through the submissions of the two sides, the initial suit was filed way back on 05.03.2014 where the primary dispute was over an agreement dated 29.12.2011 for which the plaintiff had sought decree for specific performance. The defendants (now respondents) in their written statement filed on 06.01.2015 before the trial Court denied the due execution of the alleged agreement to sell and absolutely denied the signatures on any such agreement. As has been argued by the learned counsel for the two sides, admittedly at the time of filing of the written statement the defendants had taken up a categorical stand of denial of the agreement to sell dated 29.12.2011 and which was the rallying point of dispute between the two sides. Thus, it all means it was well within the knowledge of the plaintiff petitioner that he was supposed to displace the contentions of the opposite party over the agreement and the signatures thereon. To the specific query of the Court, learned counsel for the

revisionist fairly concedes that in the list of witnesses, no such witness was sought to be examined by the plaintiff in respect of this fact nor was ever examined till date. It is at the fag end of the plaintiff's evidence the application has come about, rather gives an inkling that the plaintiff is trying to unduly delay the proceedings when it was the categoric stand of the defendants (now respondents) absolutely denying this stand of the plaintiff.

After the amendment of Code of Civil Procedure, Order XVIII Rule 17-A CPC stood omitted with effect from 01.07.2002 primarily to facilitate expeditious disposal of the suits to prevent undue resortation by the parties to dilly-dally and delay the matters on such frivolous pretexts. It is not the case of the petitioner that such an evidence or stand was not known to them or they were not aware of it when they went in trial of the suit.

At the time of framing of issues, parties were aware of the stand in the pleadings of the two sides and therefore, to the mind of this Court, after sufficient opportunities had been afforded by the trial Court to the plaintiff to complete his evidence and his failure to do so, what one can perceive a device was chalked out intending to fill-up the lacuna and omission in his case and thus, plug the loophole and improve his case to the prejudice of the other side. The Court has rightly proceeded in terms

of provisions of Order XVIII Rule 16 CPC and there is not a case where the Court needs to resort to provisions of Order XVIII Rule 17 CPC to enable it to re-call and re-examine a witness at any stage of the proceedings. Though on behalf of the revisionist, reliance is sought to be placed on a Full Bench view of Hon'ble Telangana and Andhra Pradesh High Court in '**Bande Siva Shankara Srinivasa Prasad and others vs. Ravi Surya Prakash Babu and others**' 2016(2) RCR (Civil) 782, whereby their Lordships were of the view that under Section 45 of the Evidence Act, disputed signatures can be compared by an expert at any stage of the trial of the suit, however the same is subject to the condition as to the judicial discretion where exigencies so demand. In the present case, when the suit was filed on 05.03.2014 and written statement denying signatures on the agreement had been taken on 06.01.2015, why and for what reasons the plaintiff applicant petitioner kept on participating in the trial without taking any steps in that direction and when the Court had afforded them last opportunity to complete the evidence, as a surreptitious intent moved the application to that effect on 10.07.2019 after more than 4 ½ years, further is a distressing feature for the petitioner and amply demonstrates the purpose behind such a move. Moreover, it is a total judicious discretion of the trial Court depending on the individual facts and circumstances before it to seek or not to seek

expert opinion and comparison of the disputed signatures. Such a yawning gap in-between and absence of any legitimate overwhelming reason certainly is to the detriment of the petitioner. The Court below in the impugned order has rightly drawn the conclusion that this is nothing but an abuse of the process of law and has rightly declined the prayer and dismissed the application. This Court does not feel inclined to allow the present revision petition which as such stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 10, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No