

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

SAO-10-2021(O&M)

Date of decision:-01.11.2021

Smt.Vidhya (deceased) through LR Ishwar Singh

...Appellant/Defendant

Versus

Digh Ram

...Respondent/Plaintiff

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Raghav Gulati, Advocate
for appellant.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Briefly stated, the facts of the case are that plaintiff Digh Ram had filed a suit for specific performance and permanent injunction against defendant – Smt.Vidhya; that civil suit was dismissed by learned Civil Judge (Sr.Divn.) Rewari vide judgment and decree dated 8.9.2017; that judgment and decree were challenged in appeal, which was assigned to learned Additional District Judge, Rewari; during the pendency of the appeal, an application under Order 41 Rule 27 CPC for additional evidence was filed, which was allowed by learned Additional District Judge, Rewari. The reasoning given is contained in paras No.22 and 23 of

the judgment, which for ready reference are being reproduced as under:

22. In the present case, the plaintiff Dighram has sought specific performance of the agreement to sell dated 26.03.1987, thus the prime document on which his claim is based, is the said agreement to sell. The defendant Smt. Vidhya Devi, wife of the executant Bahadur Singh has not specifically denied the thumb impressions of Bahadur Singh on that agreement to sell in her written statement. Though one of the attesting witnesses to the said agreement to sell was examined, however, the said examination could not convincingly satisfy the trial Court regarding validity, genuineness and proof of the agreement to sell so set up by the plaintiff. Thus, primarily on this ground, as made out from the findings recorded in para no.14 of the judgment, the relief to the plaintiff was declined. No attempt was made by the defendant to disprove the thumb impressions on the said agreement to sell. No doubt onus to prove the execution of said agreement to sell was on plaintiff since beginning and he should have discharged that burden at the appropriate stage when he was leading evidence. However, this was not done. It was only at the stage of arguments before the trial Court realising that the examination of expert to prove the thumb impressions of Bahadur Singh was required, an application was moved for additional evidence by plaintiff. I concur that there was lack of due diligence on the part of the plaintiff by not doing the needful in time.

23. However, having regard to the nature of controversy, stake of the parties and holding that the agreement to sell goes to the root of the case, to my view, it is necessary to examine Finger Print Expert after comparison of the thumb impressions of the deceased Bahadur Singh on the agreement to sell with his admitted thumb impressions/signatures on the case file for the just and fair decision of the case. Opposite party can be compensated in terms of the cost for the delay caused. Mere lack of due diligence on the part of the counsel to see the stake of the parties would not effect the power of

*the Court to call for additional evidence for substantial cause and justice. In **Phool Chand Jain & Ors. Vs Smt. Jotri Devi & Ors. (supra)** Hon'ble High Court of Punjab & Haryana held that no party can be denied the right to examine any witness on the mere ground that the evidence that party could have adduced at that time when he was adducing affirmative evidence or when he had right to adduce rebuttal evidence, did not do it. Evidence to determine real controversy in suit must be allowed to be produced. It was further held that the principles of procedural law are hand maid to justice.*

2. Resultantly, the plaintiff was allowed to examine Fingerprints Expert after comparison of the thumb impressions of deceased Bahadur Singh on the agreement to sell with his admitted thumb impressions on the case file at his own expenses. The application was allowed with cost of Rs.3,000/- to meet the delay. Keeping in view the nature of additional evidence so sought to be led, to rebut the same reasonable opportunity was directed to be afforded to respondent/defendant. Therefore, the case was remanded to the trial Court for fresh adjudication on the issues formulated after taking additional evidence. The defendant felt aggrieved by such decision of learned Additional District Judge, Rewari and filed the instant second appeal against order.

3. I have heard learned counsel for the appellant besides going through the record.

4. The judgment passed by the lower Appellate Court is detailed and well reasoned. It does not come out to suffer from any illegality or infirmity much less apparent on the face of it. The judgment is certainly not perverse or passed in an arbitrary manner and there is no reason to

interfere with the same.

5. Finding no merit in the appeal, the same stands dismissed.

01.11.2021

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No