

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

CR-3046-2021 (O&M)

Date of decision: 01.12.2021

Ashok Kumar

....Petitioner

Versus

Manohar Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Yogesh Goel, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioner is a plaintiff in a suit for possession by way of specific performance of the agreement to sell, which is pending before the Civil Court. Learned trial court, on appreciation of the pleadings, culled out the following issues:-

- “1. Whether the plaintiff is entitled possession by way of specific performance of agreement to sell dated 21.12.2012? OPP.
2. Whether the plaintiff is entitled to the permanent injunction as prayed? OPP.
3. Whether suit of plaintiff is false, frivolous, vexatious?OPD.
4. Whether the suit of plaintiff is properly valued for the purpose of court fees and jurisdiction?OPP.
5. Relief.”

The plaintiff as well as the defendant have already concluded their evidence. When the case was fixed for rebuttal evidence, if any, and the final arguments, the plaintiff filed an application for permission to examine a finger print and handwriting expert. Learned trial court has declined the permission.

Learned counsel representing the petitioner contends that the proposed evidence will fall within the scope of issue no.3 and therefore, the plaintiff can lead evidence in rebuttal.

In the considered view of the Court, it is the primary duty of the plaintiff to prove that there was a valid agreement to sell executed by the defendants in his favour. Thus, the proposed evidence would fall within the scope of issue no.1. The opportunity to lead rebuttal evidence is available to the plaintiff only with respect to the issues, onus to prove whereof was on the defendant(s). Reliance in this regard can be placed on the decision of the Division Bench of this Court in **Surjit Singh and others vs. Jagtar Singh and others'** 2007 (1) RCR (Civil) 537 and **'Jagdev Singh and others vs. Darshan Singh and others'** 2007 (1) RCR (Civil) 794. It was held that the plaintiff can be permitted to lead rebuttal evidence only with respect to an issue, onus whereof, was on the defendant. Furthermore, the evidence of the expert is in the form of an opinion which is not binding on the Court. The suit is pending for the last more than 7 years. Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

01.12.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE