

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4663 of 2016(O&M)
Date of decision: 21.07.2022

Bakhtawar Singh

..Petitioner

Versus

Surinder Pal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Dhawan, Advocate
for the petitioner.
Mr. Rakesh Kumar, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The petitioner herein is defendant no.1 in a suit for grant of decree of possession by way of specific performance of the agreement to sell.

On appreciation of the pleadings, the trial court had culled out the following issues:-

- “1. Whether defendant no.1 agreed to sale of disputed property in favour of plaintiff?OPP
2. Whether defendant no.1 executed agreement for sale in favour of plaintiff after receiving earnest money to the tune of Rs.4,00,000/-?OPP
3. Whether plaintiff is ready and willing to perform his part of agreement?OPP
4. Whether sale deed executed by defendant no.1 in favour of defendant no.2 and 3 are liable to be set aside?OPP
5. Whether present suit has been filed by duly competent person?OPP
6. Whether plaintiff is entitled for specific performance for agreement or alternative relief, if so to what extent?OPP
7. Whether present suit is maintainable?OPP
8. Whether plaintiff is estopped to file this suit by his own act and conduct?OPD
9. Whether plaintiff has concealed true and material facts from this court?OPD
10. Whether defendants no.2 and 3 have purchased the disputed property for valuable consideration?OPD
11. Relief.”

After the plaintiff has concluded his evidence, the defendants led their evidence and concluded the evidence. Thereafter the plaintiff had been granted permission to lead evidence in rebuttal in order to examine Handwriting and Finger Print Expert so as to prove that the agreement to sell has been thumb marked or signed by defendant no.1. The trial court has allowed the said application.

The learned counsel representing the plaintiff admits that the evidence sought to be produced falls within the scope of issue no.2 framed by the Court.

Two different Division Benches 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.** has laid down that the plaintiff can be permitted to lead rebuttal evidence only with respect to the issues, onus whereof is on the defendants to prove. The trial court has overlooked the aforesaid well settled position of law.

Hence, the order under challenge cannot be sustained. Consequently, the same is set aside while allowing the application.

Disposed of accordingly.

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

July 21, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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