

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 615 of 2017 (O&M)

Date of Decision: 28.07.2022

M/s Izaan Proprietors Company Limited and Another

... Petitioner(s)

Versus

Surender Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sunish Bindlish, Advocate
for the petitioner(s).

Mr. Amit Kumar Goyal, Advocate
for the respondent No.2.

Anil Kshetarpal, J.

CM-1891-CII-2017

In view of the prayer made in the application, which is supported by an affidavit, the same is allowed, subject to all the just exceptions. The proposed legal representatives, named in para 3 of the application, are the Class-I heirs of respondent No.4-Randhir, who is stated to have died on 03.01.2015. They are permitted to be brought on record as the legal heirs of the respondent No.4-Randhir, for the purpose of defending the appeal.

RSA-615-2017

2. The learned counsel representing the petitioners submits that their prayer for permission to compare the thumb impressions of the defendant No.2, 3 and 8 on the alleged agreement to sell was filed when the

petitioners (defendant No. 9 and 10 before the learned trial Court) are purchasers of the property by way of a registered sale deed dated 31.03.2006 from the defendant No.1 to 8.

3. The learned counsel representing the plaintiffs is unable to controvert these facts.

4. The learned trial Court has refused to grant permission to the defendant No. 9 and 10 on the ground that previously, an application was filed by the plaintiffs to this effect which was allowed on 05.01.2016, but the defendant No.1 to 8 did not come forward to give their standard thumb impressions/signatures. The learned trial Court found that on 29.02.2018, the learned trial Court recorded an interlocutory order to the effect that an adverse inference will be drawn against the defendants as they have failed to comply with the order dated 05.01.2016.

5. The petitioners are the purchasers of the suit property before filing of the suit. The plaintiffs have filed a suit for grant of decree of possession by way of specific performance of the agreement to sell on 17.04.2006. The alleged agreement to sell executed in favour of the plaintiffs is dated 14.01.2002.

6. It is admitted position on the record that the defendant No. 9 and 10 were never given any opportunity to get the thumb impressions/signatures of the defendants on the alleged agreement to sell dated 14.01.2002 compared. The petitioners (defendant No.9 and 10) are the purchasers for consideration. They have a right to defend the suit if the defendant No.1 to 8 have failed to appear before the Court for giving their standard thumb impressions and signatures. Once the case is fixed for the

defendants' evidence, the defendants have right to lead the relevant evidence. The Court cannot scuttle the aforesaid opportunity available to the defendants.

7. Consequently, the present revision petition is allowed. The order, under challenge, is set aside. The learned trial Court is directed to grant an opportunity to the petitioners (defendant No.9 and 10) to examine the Handwriting and Fingerprint Expert in order to prove their case. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 28, 2022
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No