

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

CR-6519-2014 (O&M)

Date of decision: 17.11.2022

Pritpal Singh and others

....Petitioners

Versus

Harbans Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate for the petitioners

Mr. Sandeep Jain and

Mr. Sachin Jain, Advocates for respondent no.1 and 2

ANIL KSHETARPAL, J (Oral)

1. The defendants in a suit for possession by way of specific performance of the agreement to sell are the petitioners herein. The trial court has permitted the plaintiff to examine the handwriting and fingerprint expert in order to rebut the defendant's contention that the agreement to sell is forged and fabricated. This revision petition has been preferred challenging the aforesaid order passed by the trial court.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book. Learned counsel representing the petitioners contends that the suit is based upon the alleged agreement to sell. He submits that, while filing the written statement, the defendant asserted that the agreement to sell is false and fabricated. Therefore, the plaintiff was required to lead evidence in affirmative. He submits that the plaintiff can be permitted to lead rebuttal evidence only with respect to the issues, the onus whereof is on the plaintiff.

3. Per contra, the learned counsel representing the respondents while drawing the attention of the Court to the issues framed by the trial court on 24th September, 2013 submits that the onus to prove issue No. 5 was on the defendant. Consequently, the plaintiff has correctly been given the opportunity to lead rebuttal evidence. At this stage, the learned counsel representing the petitioners submits that in fact, issues no.1 and 5 are overlapping with each other and issue no. 5 has not been correctly framed.

4. The issues framed by the trial court on 24 September, 2013 are extracted as under:-

1. *Whether the plaintiffs are entitled to possession by way of specific performance of agreement to sell dated 20.07.2005? OPP.*

2. *Whether plaintiffs remained ready and willing to perform their part of agreement? OPP.*

3. *Whether in the alternative plaintiffs are entitled to recovery of Rs.90 lacs as prayed? OPP*

4. *Whether the suit is within limitation? OPP.*

5. *Whether the agreement in question is false, fictitious, forged, fabricated, result of fraud and misrepresentation? OPD.*

6. *Whether the plaintiffs have no cause of action to file the suit?OPD.*

7. *Relief."*

5. It is evident that the parties have been leading their evidence on the basis of issues culled out on 24 September, 2013. There is some substance in the argument of the learned counsel representing the petitioners that issue no. 5 is superfluous. In fact, the trial court has erred in placing onus on the defendant. However, the correctness of the issues was never challenged by the parties during all this time. Thus, the

plaintiff has been granted permission to lead rebuttal evidence for issue No. 5. 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 have, consistently, held that the plaintiff is entitled to lead rebuttal evidence with respect to the issues, the onus whereof is on the defendant.

6. Keeping in view the aforesaid facts, no ground to interfere with the impugned order passed by the trial court is made out. Since the suit is based upon the agreement to sell, therefore, it is considered appropriate to direct the trial court to grant another opportunity to the defendant, after the plaintiff has examined the expert.

7. With these observations, the revision petition stands disposed of.

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

17.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE