

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 3360 of 2019 (O&M)

Date of decision : December 6th, 2022

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Vikram Singh (Deceased) through Legal/natural heirs

.....Petitioners

vs.

Hardwari (Now deceased) through his LRs and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the petitioners

Ms. Pratibha Yadav, Advocate for respondent No. 1(viii)

Mr. Rishabh Gupta, Advocate for respondent No.2

Ms. Nidhika, Advocate for

Mr. Nitin Thatai, Advocate for respondent No.3.

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H. S. Madaan, J.

1. Briefly stated, facts of the case are that, plaintiff Vikram Singh, since dead, now represented by his Legal Representatives, had filed a suit for specific performance of agreement to sell dated 6.1.2005, against defendants Hardwari and others. On notice, defendants put in appearance. Defendant No.1 in the written statement filed by him had admitted the execution of agreement to sell dated 6.1.2005 and having received a sum of Rs.9 lacs as earnest money from the plaintiff on that day, but come up with the plea that there was cutting in the agreement to sell, in as much as, the date of execution of the sale deed was fixed as 5.5.2005 and not 5.8.2005.

2. From the pleadings of the parties, following issues were framed:-

- i) Whether the plaintiffs are entitled to decree for specific performance with consequential relief of permanent injunction as prayed for ? OPP
- ii) Whether the suit is not maintainable in the present form? OPD
- iii) Whether the plaintiff has no locus-standi to file the present suit ? OPD
- iv) Whether the plaintiff are estopped from filing the present suit by their own acts and conduct? OPD
- v) Whether the suit is time barred ? OPD
- vi) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
- vii) Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
- viii) Relief.

3. Since defendant No.1 had executed sale deeds in favour of defendants No. 2 and 3 during pendency of the suit, such defendants had been brought on record. Defendant No.1 absented from the proceedings of the suit and was proceeded against ex parte on 19.1.2016, whereas defendants No.2 and 3 continued contesting the suit. The plaintiff concluded his evidence and thereafter the case was fixed for evidence of defendants No. 2 and 3. Defendants No. 2

and 3, to show that there was cutting in the date, examined a few witnesses including a document expert. The plaintiff had filed an application to examine document expert in rebuttal, to rebut the evidence of document expert examined by defendants No. 2 and 3. However, that application was dismissed by the trial Court vide order dated 26.4.2019, leaving the legal representatives of plaintiff - Vikram Singh aggrieved and they have brought the present revision petition, praying that the order under revision be set aside and application filed by them for permission to examine the document expert, be allowed.

4. Notice of the revision petition was given to the respondents, who had put in appearance through counsel.

5. I have heard learned counsel for the respondents, since learned counsel for the petitioner has not put in appearance, although the case was adjourned for final arguments in his presence. On account of stay order being operating, the proceedings in the trial court are held up, therefore, the revision petition is being decided after hearing learned counsel for the respondents and going through the record.

6. I find that the order under revision is quite detailed and well reasoned. The trial Court has noticed that though defendant No.1 in the written statement filed by him had admitted the agreement to sell having been entered into by him with the plaintiff on 6.1.2005 and having received Rs. 9 lacs but has pointed out that date for execution of the sale deed was fixed as 5.5.2005 and not 5.8.2005

and there was cutting in the date, so as to make it appear as 5.8.2005. In that way, the plaintiff was aware of this objection having been taken from defendant No.1 right from the beginning and he could have led evidence in affirmative when the case had been fixed for evidence of plaintiff. Nothing prevented the plaintiff from examining any document expert / forensic expert during the course of his evidence in affirmative, but he did not do so and rather when defendants No. 2 and 3 had lead evidence including examining a document expert, he moved an application to rebut the evidence adduced by defendants No. 2 and 3, which is certainly not permissible. The trial Court has referred to law on this point by citing judgments that hand writing expert cannot be allowed to be examined in rebuttal or by way of additional evidence, under the circumstances, so as to fill up the lacuna without satisfying the court that such evidence is required for effective adjudication of the case.

7. The order under revision is certainly not perverse or arbitrary. It does not suffer from any illegality or infirmity. The application moved by legal representatives of the plaintiff was rightly declined and no reason is there to allow the same.

8. The revision petition is found to be without any merit and the same is dismissed accordingly.

December 6th, 2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No