

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

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**CR No. 4864 of 2019
Date of decision : 28.9.2022**

B.K. Mudgal**.....Petitioner****Vs.****Aash Mohd. and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Sanjay Mittal, Advocate, for the petitioner

Mr. Arjun Attri, Advocate, for the respondents

TRIBHUVAN DAHIYA, J. (Oral)

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 19.7.2019 passed by the trial Court vide which the petitioner/plaintiff's application for appointing Hand Writing Expert was dismissed.

2. The facts in brief are, the petitioner/plaintiff filed a suit for specific performance of contract, possession and permanent injunction with the averments that the respondents/defendants agreed to sell their agricultural land measuring 44 kanal and 8 marla to him for a total sale consideration of Rs.2,16,45,000/-, by executing an agreement to sell dated 10.7.2013. The date of execution of sale deed as per the agreement was 10.10.2013, which was extended with mutual consent of the parties to 20.10.2013. The suit was contested by the respondents/defendants by filing written statement, *inter alia*, taking the specific plea that the agreement to sell dated 10.7.2013 was cancelled

and a fresh agreement to sell was executed on 21.10.2013, which was also

cancelled due to failure of the petitioner/plaintiff to perform his part of the contract. No replication denying the averments regarding subsequent agreement to sell dated 21.10.2013 was filed by the petitioner/plaintiff. On completion of pleadings, the following issues were framed by the trial Court,

1. Whether the defendants duly executed the agreement to sell dated 10.7.2013? OPP
2. Whether the plaintiff was always and is still ready, willing to perform his part of agreement? OPP
3. Whether the plaintiff is entitled to specific performance to sell dated 10.7.2013? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Relief.

3. Thereupon, evidence to prove Issues No.1 to 3 for which onus was on the plaintiff, was led by him. The respondents/defendants led evidence on Issue No.4 as the onus to prove the same was on them and produced the agreement to sell dated 21.10.2013 in their evidence. After that, an application, Annexure P-3, for appointing Hand Writing Expert was filed by the petitioner/plaintiff.

4. The trial Court, vide impugned order, dismissed the petitioner/plaintiff's application on the ground that he had sufficient time to lead evidence regarding the fact, as the second agreement had been specifically mentioned in the written statement. The onus was upon the plaintiff to examine the Hand Writing Expert in his evidence or deny the execution of the second agreement to sell dated 21.10.2013. Besides, right to rebuttal was not reserved by the plaintiff at the time of closure of his evidence. Therefore, he could not be allowed to examine any Hand Writing Expert in rebuttal evidence.

5. Learned counsel for the petitioner/plaintiff has assailed the impugned order on the ground that his application for appointment of Hand

Writing Expert needed to be allowed, as he could file the same only after leading of evidence on Issue No.4 by the respondents/defendants. Therefore, he should be allowed to rebut the alleged second agreement to sell by report of the Hand Writing Expert for verification of plaintiff's signatures.

6. *Per contra*, learned counsel for the respondents/defendants has argued that the impugned order is based upon relevant consideration and needs to be upheld. In support of his submissions, he relied upon the judgment of a Division Bench of this Court in ***Surjit Singh and others v. Jagtar Singh and others*; 2007 (1) RCR (Civil) 537.**

7. The respondents/defendants have contested the suit by pleading that the agreement to sell dated 10.10.2013 was cancelled by a fresh agreement to sell dated 21.10.2013. Onus to prove Issue no.4 was on the defendants. It was in testimony of the defendant as DW-1, that the fresh agreement to sell was adduced as Ex. D1. It is, therefore, apparent that for the first time the fresh agreement to sell was produced on record was during testimony of the defendant while adducing evidence in his defence to discharge the onus on Issue No.4. Therefore, at the time of leading evidence in affirmative, the plaintiff had no occasion to lead any evidence to dis-prove the fresh agreement to sell, as the same had not been produced on record by that time. Besides, the plaintiff cannot lead evidence in negative to disprove his own agreement to sell dated 10.7.2013 which was stated to have been cancelled by the defendants by a fresh agreement to sell dated 21.10.2013. Therefore, his right to lead evidence in rebuttal cannot be taken away. The law laid down by the Division Bench of this Court in ***Surjit Singh case (supra)*** is with regard to right of the plaintiff to lead evidence in rebuttal on issues, the onus to prove is on the plaintiff. In the facts of the instant case, the petitioner/plaintiff has sought to lead additional

evidence in rebuttal on Issue No.4, the onus to prove the same is on the defendants. Therefore, the law laid down in *Surjit Singh case (supra)* has no application to the facts of the instant case.

8. Similar view was taken by this Court in *Kanwaljit Kaur Bedi v. Paramjit Singh Sawhney and others*, Law Finder Doc id # 1616370, wherein it was held as under:

18. In the instant case, the plaintiff can discharge onus of issue no.1 only when execution of Will is established on record. Plaintiff is not supposed to lead evidence in negative. Defendants led evidence in the contest of execution of Will only in their defence after acceptance of their prayer for leading secondary evidence. In such a scenario, the application of the plaintiff to lead evidence on Will was not crystallized at the time of leading evidence in affirmative. No Will was placed on record by the defendants. It was only placed on record by means of secondary evidence. Even if, the prayer for leading expert evidence by defendants was disallowed by the trial Court, the same will not curtail the right of the plaintiff to lead evidence in rebuttal. The ratio laid down in *Surjit Singh and others case (supra)*, *Jagdev Singh and others case (supra)* and *Avtar Singh's case (supra)* cannot be applied in the present set of circumstances, where the factum of Will in terms of its execution was proved only in defence by leading evidence. Even if, the factum of Will was in the knowledge of the plaintiff from the very beginning, still the plaintiff was not supposed to lead evidence in negative to prove that the Will was not genuine. It is only after the evidence led by the defendants in terms of execution of Will, the plaintiff would lead evidence to show that the Will is not genuine.

9. In view of the aforesaid, the petitioner/plaintiff needs to be given an opportunity to lead additional evidence in rebuttal and, his application (for appointing Hand Writing Expert) to rebut the fresh agreement to sell and for examining of the Hand Writing Expert deserves to be allowed.

10. Accordingly, the revision petition is allowed. The impugned order

of the trial Court dated 19.7.2019 is set aside and the petitioner/plaintiff is held entitled to lead evidence in rebuttal as prayed by him in the application Annexure P-3, moved for the purpose.

(TRIBHUVAN DAHIYA)
JUDGE

28.9.2022

Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No