

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202

CR No.5837 of 2019

Reserved on : 12.07.2022

Date of Decision : 25.07.2022

Surinder Kaur (since deceased) through LR

....Petitioner

VERSUS

Taranjit Singh and Anr.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Sharad Mehra, Advocate for the petitioners.

Mr. B.M. Vinayak, Advocate for respondent no.1.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 29.08.2019 (Annexure P-1) passed by Civil Judge (Jr. Division), Amritsar whereby the application seeking permission for comparison of signatures of defendant-respondent no.1 by a handwriting expert was dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration. Issues in the said suit were framed on 13.09.2018 and the plaintiff-petitioner closed her evidence in the affirmative on 29.01.2019. The defendant-respondents led their evidence and closed the same on 18.07.2019. During the rebuttal evidence, the plaintiff-petitioner moved an application on 20.08.2019 for comparison of signatures of Taranjit Singh (defendant-respondent no.1) on the compromise dated 29.09.2008, which was specifically denied by the defendant-respondent no.1 in his written statement. The application was contested and vide the impugned order dated 29.08.2019, the application was dismissed.

Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner has wrongly been denied the right to lead additional evidence and that since the defendant-respondent no.1 had denied his signatures on the compromise during the cross-examination, hence, the necessity for filing an application to examine the handwriting expert at the time of rebuttal arose.

Per contra learned counsel for the defendant-respondent no.1 has contended that in the written statement filed by the defendant-respondent no.1, execution of the compromise was specifically denied and that there was no necessity to examine any handwriting expert. In support of his arguments, learned counsel for the defendant-respondent no.1 has relied upon the judgments of this Court in **Jagdev Singh & Ors. vs. Darshan Singh & Ors. [2007(1) RCR (Civil) 794]**; **Surjit Singh & Ors. vs. Jagtar Singh & Ors. [2007(1) RCR (Civil) 537]**; **Rashpinder Singh vs. Seema [2018(4) PLR 732]**; **Gurjeet Kaur vs. Mani Singh & Anr. [2014(56) RCR (Civil) 151]**; **Mohan Pal Singh & Anr. vs. Karampal Singh & Anr. [2010(4) RCR (Civil) 627]**; **Kewal Krishan (deceased) through LRs vs. Raj Kishan & Ors. [2019(3) PLR 131]**; **Pardeep Singh vs. Piara Dass [2014(24) RCR (Civil) 422** and judgment dated 20.01.2020 passed in **CR No.4597 of 2017 (Subhash Bhandari vs. Sudarshan Kumar Wahi)**.

In the present case the defendant-respondent no.1 specifically denied his signatures on the compromise in the written statement filed by him. The plaintiff-petitioner closed her evidence in the affirmative on 29.01.2019 and chose not to examine a handwriting expert. Now in rebuttal the plaintiff-petitioner wishes to examine a handwriting expert by way of additional evidence.

In the case of **Jagdev Singh** (*supra*), a Division Bench of this Court has held that the plaintiff cannot be permitted to lead evidence in rebuttal on the issues onus to prove of which was on the plaintiff herself. In the cases of **Rashpinder Singh** (*supra*) and **Gurjeet Kaur** (*supra*) the said principle was reiterated.

Since the signatures have been denied by the defendant-respondent no.1 in his cross-examination, the arguments raised by learned counsel for the plaintiff-petitioner cannot be accepted inasmuch as there was a categorical denial in the written statement regarding the signing of any compromise.

In the suit, Issues no.1 and 2 have been framed as under :

1. Whether the plaintiff executed a transfer deed dated 03.10.2008 in favour of the defendant no.1 with a promise from defendant no.1 to take care of plaintiff, her husband and her daughter, failing which the transfer deed shall be cancelled ? OPP
2. Whether the plaintiff is entitled to declaration for cancellation of sale deed dated 03.10.2008 and subsequent sale deed executed by defendant no.1 in favour of defendant no.2 ? OPP

The onus to prove the compromise was on the plaintiff-petitioner. The evidence to prove the said issues needed to be led in the affirmative. As per the law discussed above, the plaintiff-petitioner cannot be permitted to lead evidence in rebuttal on the issues onus of which was upon her to prove in affirmative.

That being so, I do not find any illegality or infirmity in the impugned order dated 29.08.2019 passed by the Civil Judge (Jr. Division), Amritsar. The present revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

25.07.2022
jk

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO