

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-63-2022

Date of Decision: 10.01.2022

SUMAN RANI

...Petitioner

Versus

HARI OM

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

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

(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

Petition herein under Article 227 of the Constitution of India is for setting aside the impugned order dated 10.12.2021 (Annexure P-5) passed by Additional Civil Judge (Senior Division), Rewari, whereby an application moved by the plaintiff-respondent for producing the documents in additional evidence was allowed.

2. Learned counsel for the petitioner submits that the plaintiff-respondent filed a suit for possession by way of specific performance of agreement to sell dated 19.06.2013. The petitioner in response thereof filed a written statement denying the agreement to sell by stating that the same is forged and fabricated document. Learned counsel further submits that after filing the written statement by the petitioner, the issues were framed by the Court below and after completion of evidence by both the parties, the plaintiff-respondent filed an application for producing the handwriting expert to prove the signatures and thumb impression of defendant/petitioner-Suman Rani in additional evidence, which was allowed. Learned counsel for the petitioner further submits that once the onus was upon the plaintiff to prove the agreement to sell dated 19.06.2013, he has a right to move an application only at the time of affirmative evidence and not at the stage of rebuttal evidence. Learned counsel relied upon judgments of this Court

rendered in **Civil Revision No.3787 of 2016** titled as **Parmod Kumar vs Bhagat Singh** decided on **13.09.2018**, **M/s Satyam Steel vs Smt. Sarla and another** rendered in **Civil Revision No.6190 of 2016** decided on **20.09.2016**, **Civil Revision No.240 of 1992** titled as **Tara Chand vs Randeep Singh** decided on **04.01.1995**, **Civil Revision No.2752 of 1989** titled as **Joginer Singh vs Baru Mal** decided on **09.03.1990**, **Civil Revision No.7295 of 2013** titled as **Ram Kumar vs Raj Kumar and others**, decided on **29.11.2013** and **Civil Revision No.1635 of 2014** titled as **Maghar Singh and others Vs. Labh Singh and others**, decided on **13.10.2017** in support of his arguments.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. Paras 1 and 2 of respondent's application for additional evidence are as under :-

"1. That the defendant Suman Rani neither in the reply to the notice nor in the written statement filed by her, nowhere stated that she did not come to the Tehsil premises on 19.6.2013. Hence, there is no question of execution of agreement dated 19.6.2013 in favour of plaintiff/applicant. On the other hand, when plaintiff appeared before the Court as PW3 it was suggested by the opposite party that the signatures of Suman obtained on that day in collusion with Shiv Nandan taking advantage of execution of sale deed by Seema Devi in favour of Lata. Defendant Suman for the 1st time in her affidavit filed for purpose of evidence of the defendant has stated that she did not come to the Tehsil premises on 19.6.2013.

2. That in view of the above stated suggestion of the defendant to the plaintiff during the course of his cross examination plaintiff/applicant did not examine any handwriting and fingerprint expert to prove the signatures and thumb impressions of Suman Rani on the agreement dated 19.6.2013. But in view of her statement before the Court by way of affidavit, now it is very essential to rebut the false stand taken by Suman defendant by examining handwriting and fingerprint to establish beyond any doubt about the existence of signatures and thumb impressions of Suman Rani on the agreement dated 19.6.2013."

5. The order assailed herein is premised, *inter alia*, on the following reasoning :

"5. The present application has been filed by applicant/plaintiff seeking handwriting & fingerprint expert examination to prove the signatures and thumb impressions of defendant Suman Rani on agreement to sell dated

19.06.2013 with the averments that the said witness was not examined during plaintiff evidence in view of the stand taken by defendant in the written statement and the suggestion put to her by the Ld. Counsel for the defendant to the plaintiff during the course of his cross-examination, but as defendant has denied execution of agreement to sell dated 19.06.2013 in the evidence led by her, so, plaintiff by examination of handwriting and fingerprint expert wants to lead evidence to rebut the stand/claim of defendant denying the execution of the aforesaid agreement to sell dated 19.06.2013, which is a material issue to be decided considering the relief sought by the plaintiff of decree for specific performance of agreement to sell dated 19.06.2013. Moreover, by leading such evidence which is relevant to the case and is not beyond the pleadings of the parties. Moreover, it has been laid down by Hon'ble Apex Court in *K.K. Velusamy v. N. Palaniswamy* 2011(2) CCC 823(SC)-CPC S.151- additional evidence-court can allow recall of a witness or permit fresh evidence when additional evidence, oral or documentary will(a) assist in rendering justice, (b) court is satisfied that non production earlier was for valid and sufficient reasons-court should firstly (a) award appropriate costs to the other party to compensate for the delay, (b) court to complete the case within time schedule (c) thirdly if application is found to be mischievous, or frivolous or to cover up negligence or lacunae, it should be rejected with heavy costs, (d) if ultimately court finds that such evidence was not genuine or relevant and did not warrant the reopening of case recalling the witnesses then exemplary costs can be imposed apart from ordering prosecution if it involves fabrication of evidence-evidence available earlier but not produced should not be allowed-court should reject the application if it is filed to protract the proceedings-if the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application. So, considering the averments made in the application and the reply filed and the documents filed on record as the leading of such additional evidence is relevant and will also help the Court to adjudicate the present suit properly and effectively.

6. So, considering the facts of the case and application filed and the law laid down by the Hon'ble Apex Court, and the evidence proposed to be led by way of additional evidence and will help the court in deciding the case in hand effectively and properly. So, finding merits in the application the same stands allowed, subject to payment of cost of Rs.1,000/- to the defendant. However, it is made clear that two effective opportunities will be granted to the plaintiff to lead and complete the additional evidence. Accordingly, application stands disposed of.'

6. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement. Paras 1 and 2 of the respondent's application for additional evidence reproduced above show that he had good reasons for not examining the document expert at the stage of affirmative evidence.

7. The judgments relied upon by learned counsel for the petitioner are not applicable in the facts and circumstances of the present case. The plaintiff has a right for rebuttal evidence and no prejudice is going to be caused to the petitioner.

8. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

9. Dismissed.

January 10, 2022

gurpreet

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No