

202

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

**CR-6924-2015 (O&M)
Reserved on : 13.07.2022
Date of decision : 25.07.2022**

Smt. Reshma Bai

.....Petitioner

versus

Jagtar Singh and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aditya Jain, Advocate for the petitioner.

Mr. Kul Bhushan Sharma, Advocate for the respondents.

ALKA SARIN, J.

The present revision petition has been preferred by the plaintiff-petitioner challenging the order dated 15.09.2015 (Annexure P-1) whereby the application filed by the defendant-respondents for adducing additional evidence was allowed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for possession by way of specific performance on the basis of an agreement to sell dated 29.07.2008. The defendant-respondent No.1 filed a separate written statement and a joint written statement was filed by defendant-respondent Nos.2 and 3. The defendant-respondent Nos.2 and 3 took a specific plea in their written statement that they had never thumb-marked and never executed the agreement to sell and that the agreement to sell and the receipt were forged. Thereafter, after completion of the pleadings and before the framing of issues, counsel for the defendant-

respondents stated at the Bar that the agreement to sell and the receipt did not bear the thumb-impressions of the defendant-respondents and, hence, he wanted to get the same compared from the Government Agency. Vide order dated 28.07.2010 the application was allowed and the thumb-impressions of the defendant-respondents were sent to the FSL, Madhuban for comparison. The report of the FSL, Madhuban was received by the Court and the defendant-respondents filed objections to the report as also cross-examined the Handwriting Expert, Ramesh Chand, who appeared as PW-9. The cross-examination was conducted by the counsel for the defendant-respondents assisted by one Naresh Kataria, Handwriting and Fingerprint Expert, Gurgaon. Thereafter, the evidence was led by the plaintiff-petitioner and the defendant-respondents. The evidence of the defendant-respondents was closed by order on 13.08.2015 and the matter was adjourned for rebuttal evidence and arguments. On the date when the case was fixed for arguments, an application was filed by the defendant-respondents under Section 151 of the Code of Civil Procedure, 1908 (CPC) for adducing additional evidence to examine Naresh Kataria, Handwriting and Fingerprint Expert, Gurgaon on the ground that Naresh Kataria was to appear in Court and to give his evidence on 13.08.2015, however, his blood pressure shot up and he could not attend the Court. Reply was filed by the plaintiff-petitioner contesting the said application. The Trial Court vide the impugned order dated 15.09.2015 (Annexure P-1) allowed the said application.

Learned counsel for the plaintiff-petitioner would contend that the defendant-respondents had already availed the opportunity for getting the thumb-impressions compared from a Handwriting Expert inasmuch as on their asking the thumb-impressions were sent to the FSL, Madhuban by the

Trial Court. The fees was also deposited by the defendant-respondents themselves by moving an application dated 13.08.2010. It is further the contention that there was a specific denial in the written statement filed by defendant-respondent Nos.2 and 3 that the thumb-impressions on the agreement to sell and the receipt were not theirs and in view thereof the defendant-respondents ought to have led their evidence and the evidence of the Fingerprint Expert. However, having failed to lead their evidence, the present application has been filed for filling up the lacuna in the case. In support of his arguments, learned counsel for the plaintiff-petitioner has relied upon the judgments of this Court in the cases of **Smt. Daljit Kaur Vs. Smt. Amarjit Kaur & Anr. [CR No.4940 of 2014 decided on 28.10.2014]**; **Bhim Raj Vs. Jai Bhagwan [2000(3) RCR (Civil) 16]**; **Tarlok Singh Vs. Sohan Singh [2000(1) RCR (Civil) 723]** and **Atma Singh & Anr. Vs. Bhupinderpal Singh & Ors. [2010(24) RCR (Civil) 910]**.

Per contra, learned counsel for the defendant-respondents has contended that the Trial Court has the right to recall its order and to permit re-examination of a witness. It is further the contention that the Handwriting Expert was to appear in Court on 13.08.2015, however, due to a medical issue he could not appear. In support of his contentions, learned counsel for the defendant-respondents has relied upon the judgment by the Supreme Court in the case of **K.K. Velusamy Vs. N. Palanisamy [2011(11) SCC 275]** and the judgments of this Court in the cases of **Sanjay Kumar Vs. Vinod [2013(21) RCR (Civil) 332]** and **Krishan Kumar Sardana Vs. Sita Ram Adlakha [2009(4) RCR (Civil) 334]**.

Heard.

In the present case there was a specific denial in the written

statement of defendant-respondent Nos.2 and 3 qua the thumb-impressions on the agreement to sell as well as the receipt. Having taken a stand that the agreement to sell and the receipt were forged documents and that the thumb-impressions were not those of the defendant-respondent Nos.2 and 3, it was incumbent upon the defendant-respondents to prove the same by leading cogent evidence. On 28.07.2010, when on the oral request of the defendant-respondents the Trial Court allowed the comparison of the thumb-impressions of the defendant-respondents with those on the agreement to sell and the receipt by the FSL Madhuban, issues were also framed. Issue No.5 reads as under :

“5. Whether the agreement to sell and receipt do not compare the thumb-impression of defendants and are illegal, fraud and forged ? OPD”

A perusal of the issue as framed reveals that the onus of the said issue was on the defendant-respondents. The defendant-respondents failed to produce any Handwriting Expert and despite various numerous opportunities they did not lead their complete evidence and their evidence was closed by order dated 13.08.2015. The defendant-respondents chose not to challenge the order dated 13.08.2015 closing their evidence. Instead they chose to file an application for leading additional evidence.

This Court in the case of **Smt. Daljit Kaur** (*supra*) has held as under :

“Thus, all these judgments, relied upon by learned counsel for the respondent are relating to leading of documentary evidence which were more or less per se admissible in evidence unlike the evidence which is

sought to be produced by way of additional evidence in the present case in the form of oral evidence by examining Gurmeet Singh son of Surinder Singh Lambardar to prove the signatures of his father who alleged to have attested the Will and also by producing on record the report and examining the Handwriting and Fingerprint Expert to prove signatures of Surinder Singh Lambardar, which could have been done by defendant no.1 at the time of leading her evidence in affirmative or if she was so aggrieved, could have challenged the order of closure of her evidence by way of revision to avail an opportunity for leading the said oral evidence but in any case, keeping in view the facts and circumstances of the present case, such kind of oral evidence cannot be allowed to be led by way of additional evidence especially when the case was fixed for pronouncement of order, after having been argued on the basis of the evidence on record, to fill up the lacuna left by defendant no.1 in her evidence.”

In the case of **Bhim Raj** (*supra*), this Court has held as under :

“6. In the present case as well, the evidence of the defendants was closed by the court order and this order was not challenged by the defendants by way of revision or otherwise and the said order has become final. Thereafter the defendants could not be allowed to produce same evidence by way of additional evidence

without bringing their case strictly within the provisions of Order 18 Rule 17-A, Civil Procedure Code. In the present case, there is nothing on record to show that the defendants could not produce their evidence inspite of exercise of due diligence. Under these circumstances, the petitioner would not be entitled to produce the additional evidence at this stage.”

The judgments relied upon by learned counsel for the defendant-respondents are not applicable to the facts of the present case inasmuch as in the case of **Sanjay Kumar** (*supra*) the challenge was to the order directing closure of the evidence and that is not the case in the present revision petition. In fact, admittedly, the order closing the evidence of the defendant-respondents has never been challenged. The proposition of law laid down in the cases of **K.K. Velusamy** (*supra*) and **Krishan Kumar Sardana** (*supra*) is well established that the inherent powers of the Court under Section 151 of CPC can be invoked in appropriate cases to re-open the evidence and to recall witnesses for further examination. However, in the present case the defendant-respondents already availed an opportunity by getting the thumb-impressions compared by the FSL, Madhuban which is a Government Agency. Cross-examination was also conducted of PW-9, Fingerprint Expert from the FSL Madhuban. The application filed by the defendant-respondents for leading additional evidence at the time when the matter was fixed for arguments is bereft of any details. Issue No.5, as reproduced above, was framed on 28.07.2010 and the defendant-respondents were required to lead their evidence in the affirmative qua the said issue. Having failed to lead their evidence, the defendant-respondents cannot now

be permitted to fill up the lacuna in the case.

In view of the above, the present revision petition is allowed, the impugned order dated 15.09.2015 (Annexure P-1) is set aside and the application for additional evidence filed by the defendant-respondents stands dismissed. Pending applications, if any, also stand disposed off.

25.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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