

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5468 of 2022

Date of Decision: 24.11.2022

Bhagwant Kaur (Now Deceased) through her Legal Representative

... Petitioner(s)

Versus

Kewal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sunny K. Singla, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The petitioner herein is defendant No.1 in a suit filed for grant of decree of possession by way of specific performance of the agreement to sell dated 30.05.2006. While defending the suit, the petitioner claims that the three different agreements to sell, entered into between the parties, stood cancelled. She has also stated that the agreements to sell were without consideration.

2. The trial Court has culled out the following issues for adjudication:-

- “1. *Whether the plaintiff is entitled to possession by way of specific performance of agreement to sell dated 30.05.2006? OPP*
2. *Whether the plaintiff is entitled to alternative relief of Rs.5,50,000/- along with damages, mesne profits? OPP*

3. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
4. *Whether the plaintiff was and is ready and willing to perform his part of contract? OPP.*
5. *Whether the agreement to sell dated 30.05.2006 is without consideration? OPD*
6. *Whether the suit is barred under Order 2 Rule 2 CPC? OPD*
7. *Whether the suit of plaintiff is not legally maintainable in the present form? OPD*
8. *Relief”.*

3. The plaintiff concluded his affirmative evidence, whereas, the defendants have also concluded their evidence. The plaintiff No.1 wants to lead the rebuttal evidence in order to examine the Handwriting and Fingerprint Expert in order to prove that on the endorsement for cancellation of the alleged agreement to sell, the signatures of Sh.Rajinder Singh, his father, are not genuine. Previously, Smt.Bhagwant Kaur filed a revision petition i.e. Civil Revision No. 6934 of 2018 challenging the correctness of the order permitting the plaintiff to lead rebuttal evidence, which was dismissed on 15.07.2022. Subsequently, when the Court permitted the plaintiff to lead rebuttal evidence, the defendant No.1 (petitioner) objected thereto.

4. Heard the learned counsel representing the petitioner at length and with his able assistance, perused the paper-book.

5. The learned counsel representing the petitioner contends that in

the previous order passed on 15.07.2022, the plaintiff has been permitted to lead rebuttal evidence under the issue No.6 and not under issue No.5. He further submits that the rebuttal evidence cannot be permitted under Issue No.5 because that is only confined to the agreement to sell dated 30.05.2006 being without jurisdiction.

6. Previously, the Court had permitted the plaintiff to examine the Handwriting and Fingerprint Expert to give his opinion about the signatures of Sh.Rajinder Singh. Hence, there is an inadvertent mistake in the order as it relates to issue No.5 and not issue No.6.

7. As far as the argument of learned counsel that the evidence of Handwriting and Fingerprint Expert, shall not fall within the scope of issue No.5. It will be noted here that the issue culled out by the trial Court cannot be narrowly construed. Once the plaintiff denies the signatures of his father on the endorsement evidencing cancellation of the agreement to sell dated 30.05.2006, then he has correctly been permitted to lead rebuttal evidence.

8. The learned counsel submits that he may also be granted an opportunity to lead evidence. The petitioner, if so advised, may file an application in this regard.

9. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

November 24, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No