

2023:PHHC:122532

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

CR-1314-2020(O&M)

Date of Decision: 18.08.2023.

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Baljit Singh @ Gurjant Singh

.....Petitioner

Versus

Gurcharan Singh and Another

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Rajesh Bhatheja, Advocate for the petitioner.

Mr. N.S.Sodhi, Advocate for the respondents.

GURBIR SINGH, J (ORAL)

1. This petition is filed under Article 227 of the Constitution of India for setting aside the impugned order dated 11.02.2020 (Annexure P-7) passed by the learned Additional Civil Judge (Senior Division) Baghapurana, District Moga vide which application filed by the respondents/defendants to close the rebuttal evidence of the plaintiff/petitioner has been allowed.

2. The brief facts as culled out are that the petitioner/plaintiff, (hereinafter called 'the plaintiff') filed suit (Annexure P-1) for specific performance of the agreement to sell dated 16.02.2011 regarding plot measuring 3 ½ marlas as mentioned in the head note of the plaint and for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over the property and restraining them from alienating the said property.

3. The defendants are contesting the suit and filed their written statement. (Annexure P-3). From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 18.05.2016:-

“1. Whether the defendants entered into an agreement to sell the plot in question vide agreement to sell dated 16.02.2011 after

receiving entire sale consideration of Rs.80,000 in favour of plaintiff? OPP

2. Whether the plaintiff is entitled to specific performance of agreement to sell dated 16.02.2011?

3. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP

4. Whether the suit is not maintainable? OPD

5. Whether the suit is barred by law of limitation?OPD

6. Whether the alleged agreement to sell is forged and fabricated document and is result of fraud?

7. Relief. ”

4. Thereafter, the plaintiff led evidence. Vide order dated 16.05.2019, the evidence of the plaintiff was closed by order. Thereafter defendants concluded evidence and evidence was closed on 31.10.2019. The case was adjourned for rebuttal evidence.

5. The defendants moved an application dated 01.02.2020 (Annexure P-5) for closing the rebuttal evidence on the ground that plaintiff was required to prove agreement while leading evidence in affirmative, the plaintiff could not prove the agreement in dispute by leading rebuttal evidence.

6. The learned trial Court allowed the application and rebuttal evidence of the plaintiff has been closed.

7. The learned counsel for the plaintiff has argued that the burden was on the plaintiff for leading evidence on some issues and burden was on the defendant to lead evidence on issue No.6. The right to lead evidence in rebuttal is available to the plaintiff as burden to prove issue No.6 was on the defendants i.e. *whether the alleged agreement to sell is forged and fabricated document and is result of fraud?*. Since the specific plea has been taken by defendants in the written statement that agreement is forged and fabricated document so plaintiff is entitled to lead evidence in rebuttal.

8. Moreover, plaintiff moved an application for examining the handwriting expert to prove the signatures of the defendants on agreement to sell with their specimen signatures, which was allowed and Anil Kumar, handwriting and document expert was allowed to inspect the file and to take the relevant photographs of thumb impressions of Gurcharan Singh and Harpal Kaur- defendants. He had inspected the file and took the relevant photographs from the said file. The case was adjourned for awaiting the report of the expert. An application was moved for asking Gurcharan Singh to give his specimen signatures in Punjabi script, as his signatures were in Punjabi on the agreement to sell whereas he had put his signatures in English in capital words on the written statement. The learned trial Court vide order dated 07.12.2017 has disposed of the application of the plaintiff merely on the ground that defendant No.1-Gurcharan Singh is an NRI; residing abroad and in case any dispute arises regarding signatures of defendant No-1, then adverse inference will be drawn against him.

09. The plaintiff has a right to lead evidence in rebuttal and the impugned order dated 11.02.2020 passed by learned trial Court is against law.

10. The learned counsel for the defendants has argued that defendants did not examine any expert to prove signatures of Gurcharan Singh -defendant No.1. The evidence of the plaintiff was closed by an order dated 31.10.2019 and plaintiff did not reserve his right to lead evidence in rebuttal, so plaintiff is not entitled to lead any evidence in rebuttal and therefore, the petition deserves to be dismissed.

11. I have heard the submissions of the learned counsel for the parties. The plaintiff led evidence in affirmative. The plaintiff has failed to

conclude the evidence and his evidence was closed by order. The defendants

have also led their evidence. The plaintiff wants to lead evidence in rebuttal on issue No.6. The defendant has moved an application that the plaintiff has no right to lead the evidence in rebuttal. No doubt when there are several issues and a burden of proving some of the issues lies on the other party. The party, beginning the evidence, may be at its option to either produce evidence on all those issues or reserve it by way of answer to the evidence produced by the other party. Order 18 Rule 3 of CPC is reads as under:

“Where there are several issues, the burden of proving some of which lies on the party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.”

12. The option given to the party contemplated under Order 18 Rule 3 CPC is to be exercised on or before the time when the other party begins his evidence and not afterwards. In case *National Fertilizers Ltd. Vs. Municipal Committee, Bhatinda and Another, AIR,1982 (Punjab & Haryana) 432* wherein, it has been held as under.

“it is clear from Rule 3 of Order 18 that in case the Burden of proving some of the issues lies on the defendant, the plaintiff while starting the evidence may lead the same on all the issues including those the burden of which is on the defendant or reserve his right to lead evidence on the issues, the burden of which is on the defendant, after the latter has produced his evidence. However, in the instant case, the plaintiff did not reserve his right to do so and as such, the plaintiff could not be allowed to lead evidence by way of rebuttal.”

13. In the case in hand, no right was reserved by the plaintiff to lead evidence in rebuttal. Moreover, evidence of the plaintiff was closed by an

order. The defendants have not examined expert to examine handwriting or signatures of defendants on the agreement to sell. It is already ordered that in case the defendants dispute the signatures then adverse inference will be drawn against him. Thus, the lawful order has been passed by the learned trial Court and there is no ground to interfere in the same.

14. Petition stands dismissed accordingly.

(GURBIR SINGH)
JUDGE

18.08.2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No