

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207

CR No.4812 of 2019

Date of Decision : 10.04.2023

Sunil Kumar

....Petitioner

VERSUS

Naresh Kumar (since deceased) through LRs

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Vishal Yadav, Advocate for the respondents.

ALKA SARIN, J. (Oral)

The present revision petition has been preferred by the defendant-petitioner challenging the order dated 15.05.2019 whereby the application for additional evidence moved by the plaintiff-respondents has been allowed.

The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for possession by way of specific performance of agreement to sell dated 20.01.2015 *qua* the land measuring 21 kanals 17 marlas situated in the revenue estate of village Kulana, Tehsil and District Jhajjar. Vide order dated 23.08.2017 the evidence of the plaintiff-respondents was closed by order since the plaintiff-respondents failed to conclude the evidence. The said order was never challenged by the plaintiff-respondents. Subsequently, an application was filed under Section 151 of the Code of Civil Procedure, 1908 for examining a handwriting and fingerprint expert and for taking the signatures of the defendant-petitioner in Hindi. The said application (Annexure P-2) states that though the fingerprint expert had earlier submitted his report and had compared the disputed signatures with the admitted signatures, however, the signatures were not given by the

defendant-petitioner in the presence of the plaintiff-respondents and that the signatures marked A1 to A5 mentioned in the report were not the admitted signatures of defendant-petitioner. Vide the impugned order dated 15.05.2019, the application was allowed. Aggrieved by the said order, the present revision petition has been filed.

Learned counsel for the defendant-petitioner would contend that once the evidence of the plaintiff-respondents was closed by order and the same was never challenged, by filing the present application for additional evidence the plaintiff-respondents want to set at naught the order closing the evidence. To buttress his argument, he has relied upon judgments of this Court in the cases of **Chand Singh vs. Naranjan Singh & Anr. [1990 (1) SimLJ 292]** and **Saroj vs. Charan Singh & Ors. [2018 (5) RCR (Civil) 771]**.

Per contra, learned counsel for the plaintiff-respondents states that the earlier report of the handwriting and fingerprint expert though refers to the admitted signatures, however, the admitted signatures referred to in the report were not taken in the presence of the plaintiff-respondents. As such, the necessity of filing the application for additional evidence.

I have heard learned counsel for the parties.

In the present case, admittedly, the evidence of the plaintiff-respondents stood closed by a Court order on 23.08.2017. The plaintiff-respondents chose not to challenge the said order which attained finality. Subsequently, without so much as challenging the order dated 23.08.2017, an application was filed under Section 151 CPC for examining a handwriting and fingerprint expert for comparing the disputed signatures of the defendant-petitioner on the agreement to sell with the admitted signatures of

the defendant-petitioner herein. It is not disputed that earlier the handwriting and fingerprint expert, Deepak Sharma, was examined by the plaintiff-respondents and he has also submitted his report dated 15.11.2017 in which he is stated to have compared the disputed signatures marked D1 to D3 with the admitted signatures of the defendant-petitioner marked A1 to A5.

This Court in case of **Chand Singh** (*supra*) has held as under :

“4. After hearing the learned counsel for the petitioner, I do not find any merit in this revision petition. It is the case where the evidence of the plaintiff was closed by Court order which was never challenged by him. Now by making this application for additional evidence, the plaintiff seeks to set at naught the said order and, therefore, the application has been rightly dismissed by the trial Court.”

In the case of **Saroj** (*supra*), it was held as under :

“6. The counsel appearing for the contesting respondents urges that the suit was not contested by the mother and the other brothers and sisters and only defendants no.2 to 5 contested the case and were represented by the same counsel and joint written statement was filed and they were given six opportunities to lead evidence and their evidence was closed and that order was not challenged and when the case was fixed for rebuttal and arguments that the application was filed. The counsel submits that the claim made by the applicant that she was residing in a different village and her counsel had intimated and sent a letter at a different village stands falsified as in the title itself both the addresses are mentioned and the application had been filed through another counsel. The counsel submits that the defendant had taken a stand that the Will was forged and fabricated and they knew of the evidence they had to lead and when the order

closing evidence had not been challenged they could not be permitted to lead additional evidence.

7. *In Bhim Raj and others v. Jai Bhagwan and others 2000(2) LJR 469 (P&H) it was held that when an order by the court closing the evidence of defendants is passed the order became final being unchallenged. It was held that the defendants could not be allowed to produce some evidence by way of additional evidence without bringing their case within the provisions i.e. in spite of exercise of due diligence.*

8. *In Chand Singh v. Naranjan Singh and another 1990(1) LJR 719 (P&H) it was held that evidence closed by court order was never challenged and by making application for additional evidence, the plaintiff sought to set at naught the said order and the prayer was declined.*

9. *The lower Court notices the fact that the defendants had availed six opportunities for leading evidence and their evidence was closed in February 2010. The case had been adjourned for rebuttal and arguments several times and thereafter, that application was moved. The applicant had failed to point out that when she had got the information about the suit filed by their father in 1972. The applicant did not even mention the date on which she had got the records inspected. They did not even place on record when the copies of the civil suit had been applied for. It appears that the application had been moved with a view to get the case reopened and avail another opportunity to lead evidence. Since the applicant had failed to challenge the order closing the evidence, therefore, they could not be permitted to lead additional evidence. It is also a case where the applicant had failed to exercise due diligence. I see no infirmity in the order.”*

The plaintiff-respondents not having challenged the order dated 23.08.2017 closing the evidence by a Court order cannot now, by filing the present application, set at naught the order dated 23.08.2017 without so much as laying a challenging to the same. There is also no explanation coming forward as to why a second report is required when the report of the handwriting expert is already on the record.

In view of the above, the present revision petition is allowed. The application (Annexure P-2) stands dismissed. The impugned order dated 15.05.2019 is accordingly set aside. Pending applications, if any, also stand disposed off.

10.04.2023
jk

(ALKA SARIN)
JUDGE

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