

CR-7122-2019

205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7122-2019

DECIDED ON: 03.10.2023

ANT RAM @ ITWARA

.....PETITIONER

VERSUS

ROSHAN

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Shvetanshu Goel, Advocate
for the petitioner.Mr. Wazir Singh, Advocate
for the respondent.**VIKRAM AGGARWAL, J**

1. The present revision petition assails the order dated 20.07.2019 (Annexure P-6) passed by the Court of the Additional Civil Judge (Senior Division), Karnal vide which the application filed by the respondent-plaintiff to examine a fingerprint/handwriting expert was allowed.

2. The facts, as emanating from the paper book, are that the respondent/plaintiff-Roshan filed a suit for specific performance of the agreement to sell dated 24.12.2002 (Annexure P-1). The property in dispute is a plot measuring 3 Marlas (fully described in the plaint) situated in village Uncha Samana, District Karnal (hereinafter referred to as the 'disputed plot'). The case set by the respondent-plaintiff was that an agreement to sell dated 24.12.2002 had been executed by the petitioner-defendant in favour of the respondent-plaintiff. The total sale consideration was fixed at ₹30,000/- which was paid on the date of the execution of the agreement itself. Possession of the disputed plot is also stated to have been handed over to the respondent-plaintiff on the same day. Construction was raised subsequently and a

residential house was constructed in the year 2004. Electricity connection was also taken. However, in 2012, efforts were made by the petitioner-defendant to dispossess the respondent-plaintiff forcibly. Efforts for an amicable settlement in the Panchayat were made which remained unsuccessful. Subsequent attempts to dispossess the respondent-plaintiff were also made. A civil suit for declaration was filed which was partly decreed and the petitioner-defendant was restrained from dispossessing the respondent-plaintiff from the disputed plot except in due course of law. Ultimately, a suit for specific performance was filed by the respondent-plaintiff. The suit was opposed by the petitioner-defendant. Preliminary objections with regard to maintainability, the suit being barred by the provisions of Order 2 Rule 2 CPC, there being no cause of action to file the suit, the respondent-plaintiff having concealed vital facts from the Court etc. were raised. It was also averred that the suit had been filed on a false and fabricated alleged agreement to sell. It was averred that the petitioner-defendant had never executed the alleged agreement to sell in favour of the respondent-plaintiff. On merits also, a similar stand was taken.

3. From the pleadings of the parties, issues were framed and evidence commenced.

4. The evidence of the respondent-plaintiff was closed on a statement having been given by the respondent-plaintiff (Annexure P-3). Subsequently, the evidence of the petitioner-defendant was also led.

5. After the same had been closed, an application (Annexure P-4) was moved by the respondent-plaintiff for getting the signatures of the petitioner-defendant on the agreement to sell dated 24.12.2002 compared with his admitted signatures upon the power of attorney, written statement, evidence affidavit and statement recorded before the Court and for the said purpose, services of a handwriting/fingerprint expert were sought to be

availed. This application was opposed by way of a reply (Annexure P-5) in which it was averred that in rebuttal evidence, a handwriting/fingerprint expert could not be permitted to be examined nor could such an expert be permitted to be examined by way of additional evidence because the evidence sought to be led was well within the knowledge of the respondent-plaintiff when evidence in the affirmative was being led. However, the application was allowed by the trial Court leading to the filing of the present revision petition.

6. I have heard learned counsel for the parties and have perused the paper book.

7. Learned counsel for the petitioner-defendant submitted that the trial Court erred in allowing the application. It was contended that evidence which could have been led in the affirmative could not have been permitted to be led in rebuttal. Reference was made to the judgment dated 29.08.2022 passed by a Coordinate Bench of this Court in **CR-3327-2018** titled as '*Harbhajan Singh Vs. Darshan Kaur and Others*'. It was submitted that no right to lead evidence in rebuttal was reserved when the evidence was closed in the affirmative and even otherwise, evidence in rebuttal could have been led only if the onus to prove some issue was upon the petitioner-defendant.

8. On the other hand, it was contended by learned counsel representing the respondent-plaintiff that the application was rightly allowed by the trial Court. It was submitted that it was in the cross-examination of the petitioner-defendant that the signatures on the agreement to sell were denied and under the circumstances, the application was moved. It was submitted that prior to this, there was no occasion for the respondent-plaintiff to have examined a handwriting/fingerprint expert because the signatures on the agreement to sell had not been denied. It was submitted that at best, it could be considered as an application for additional evidence and since the evidence

is essential for the just decision of the case, it was rightly permitted to be led.

Reference was made to the judgment passed by a Coordinate Bench of this Court in **CR-8312-2017** titled as '**Karanjeet Singh Vs. Amarpreet Singh**', **2018 (3) PLR 71**.

9. I have given my thoughtful consideration to the whole issue.

10. From the pleadings of the parties, the following issues were framed:-

"1. Whether the plaintiff is entitled to decree for declaration of specific performance with consequential relief of permanent injunction as prayed for? OPP

2. Whether the suit is not legally maintainable in the present form? OPD

3. Whether the suit is barred u/o 2 rule 2 CPC? OPD

4. Whether the plaintiff has concealed true and material facts from the court? OPD

5. Whether the plaintiff has no cause of action to file the present suit?

6. Relief."

11. Evidence was led by the respondent-plaintiff in the affirmative and the same was closed on the statement of learned counsel for the respondent-plaintiff.

12. A perusal of the written statement shows that the execution of the agreement to sell was denied and it was also specifically pleaded that the agreement to sell was forged and fabricated meaning thereby that signatures were denied. It was then open for the respondent-plaintiff, while proving issue No.1, to examine a handwriting/fingerprint expert. The respondent-plaintiff cannot take a stand that since the signatures on the agreement to sell were denied only in the cross-examination by the petitioner-defendant it lead to the filing of the application for permission to examine a handwriting/fingerprint

expert. As has been discussed, this stand was taken from the very beginning and the respondent-plaintiff could have led this evidence while leading evidence in the affirmative.

13. It has been settled by a Division Bench of this Court that where evidence can be led in the affirmative, the same cannot be permitted to be led in rebuttal. One such similar issue arose before a Division Bench of this Court in the case of '*Surjit Singh and Others Vs. Jagtar Singh and Others*', 2007 (1) RCR (Civil) 537. In this case, a reference had been made by a Single Bench of this Court on precisely this issue. The reference was answered by the Division Bench after considering the entire law on the subject and it was held that Order 18 Rule 3 CPC would not give a right to the respondent-plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the respondent-plaintiff. It was held that accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 CPC. It was held that no matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. It was held that while construing the statutory provision, the Court cannot reconstruct it. The findings of the Division Bench are as under:-

“15. In our opinion, Order 18 Rule 3 of the Civil Procedure Code would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 of the Civil Procedure Code. The rule clearly postulates that “the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties”. No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot

reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (supra). It has been held that if a statement is made by the Advocate for the plaintiff that “the plaintiff closes its evidence in the affirmative only”, the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned Single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur’s case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned Single Judge in the case of M/s Punjab Steel Corporation (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned Single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that on overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations

of the Division Bench in the case of Jawant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra). ”

This view was reiterated subsequently by another Division Bench of this Court in the case of '***Avtar Singh and Another Vs. Baldev Singh and Others***', 2015 (5) RCR (Civil) 625. This view was also followed by a Coordinate Bench in ***CR-3327-2018*** titled as '***Harbhajan Singh Vs. Darshan Kaur and Others***' decided on 29.08.2022, reliance upon which has been placed by learned counsel for the petitioner-defendant. This Court is in respectful agreement with the said view taken by the Coordinate Bench following the dictum laid down by two Division Benches of this Court.

14. In so far as the judgment in the case of Karanjeet Singh Vs. Amarpreet Singh is concerned, though it did give one opportunity to the respondent-plaintiff to lead evidence in similar circumstances, this Court is unable to subscribe to the view taken in the said judgment because in this judgment, the view taken by two Division Benches of this Court in the case of ***Surjit Singh and Others (Supra)*** and ***Avtar Singh and Another (Supra)*** were probably not brought to the notice of the Coordinate Bench of this Court. This judgment in the case of Karanjeet Singh Vs. Amarpreet Singh would, therefore, be of no assistance to the respondent-plaintiff.

15. While examining the issue, this Court, for once, was inclined to accept the submissions made by learned counsel for the respondent-plaintiff only on the ground that even an application for additional evidence under such circumstances may have been allowed and that no prejudice would be caused to the petitioner-defendant if such evidence is permitted to be led. However, the categorical decisions of two Division Benches of this Court in the case of ***Surjit Singh and Others (Supra)*** and ***Avtar Singh and Another (Supra)*** led this Court to the present decision since, as was held by the Division Bench

also, any provision cannot be so liberally interpreted so as to amend or reconstruct the provision itself. The law is the law howsoever harsh it may be.

16. Under the circumstances, this Court is of the considered opinion that the trial Court erred in allowing the application filed by the respondent-plaintiff seeking permission to examine a handwriting/fingerprint expert. In view of the judgments of the Division Benches of this Court, the said view is not sustainable.

In view of the aforementioned facts and circumstances, the present revision petition is allowed. The order dated 20.07.2019 passed by the Additional Civil Judge, Senior Division, Karnal is set aside and the application filed by the respondent-plaintiff to examine a fingerprint/handwriting expert is dismissed.

(VIKRAM AGGARWAL)
JUDGE

03.10.2023
Prince Chawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No