

CR No.7115 of 2023 (O&M)

2023:PHHC:150818

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

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CR No.7115 of 2023 (O&M)

Date of Decision: 28.11.2023

NEERU JAIN AND ANR

.....Petitioners

Vs

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjay Vij, Advocate
for the petitioners.

Mr. Shivendra Swaroop, DAG, Haryana
for respondents No.1 and 2.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate
for respondent No.3/HSVP.

Mr. Sandeep Sharma, Advocate
for respondents No.4 to 6.

HARKESH MANUJA, J. (Oral)

[1]. By way of present revision petition, challenge has been laid to the order dated 30.10.2023 passed by the Addl. District Judge, Gurugram, (hereinafter to be referred as 'the Reference Court') whereby the application filed at the instance of the petitioners, seeking permission for taking thumb impressions of respondents No.4 and 5 namely Jagdish and Phool Kumar, for the purpose of sending those to the Handwriting Expert for comparison with the thumb impressions/signatures appearing over the disputed documents, stands rejected.

[2]. In the present case, certain land owned by the private respondents situated within the revenue estate of village Tikri, Tehsil and District Gurugram came to be acquired vide award dated 22.11.2006. The petitioners, based on agreement to sell dated 09.06.2005 besides registered General Power of Attorney

(for short 'the GPA') as well as Will executed in his favour at the instance of the original owners, sought apportionment in terms of Section 30 of the Land Acquisition Act, 1894 (hereinafter to be referred as 'the 1894 Act').

[3]. Upon notice, the private respondents disputed execution of the documents relied upon by the petitioners. The issues under the reference were framed on 01.03.2019. The petitioners closed their evidence on 19.05.2022 and thereafter the evidence of the private respondents came to be closed on 13.02.2023. Thereafter on 16.03.2023, relying upon depositions made by Phool Kumar as RW-2 and Jagdish as RW-3 in their cross-examinations denying their thumb impressions/signatures over the agreement to sell dated 09.06.2005, the petitioners moved an application for taking specimen thumb impressions/signatures of Phool Kumar and Jagdish so as to compare those with the thumb impressions/signatures over the original agreement to sell dated 09.06.2005.

[4]. The prayer made in the aforesaid application was strongly opposed by the private respondents by filing their objections. Vide order dated 30.10.2023, the Reference Court dismissed the application filed at the instance of the petitioners.

[5]. Impugning the aforesaid order dated 30.10.2023, passed by the Reference Court, learned counsel for the petitioners submits that proving of documents i.e. agreement to sell dated 09.06.2005 besides registered GPA and the Will was essential for effective adjudication of the rights of the petitioners. He further submits that once the signatures upon those documents were denied, dismissal of the application filed at the instance of the petitioners caused serious prejudice to their rights.

[6]. On the other hand, learned counsel for respondents No.4 to 6 opposed the submission made by learned counsel for the petitioners while submitting that the primary burden to prove the execution of documents relied upon by the petitioners was upon them and the same was required to be discharged in the affirmative evidence only and accordingly, no interference was warranted in the present revision petition.

[7]. I have heard learned counsel for the parties and gone through the paper book.

[8]. Apparently, the petitioners did not act diligently while pursuing their Reference Petition filed under Section 30 of the 1894 Act. Once the entire claim was based on agreement to sell dated 09.06.2005 besides the registered GPA and the Will, which were disputed and denied by the private respondents in their written statement having specifically alleged forgery of those documents, the primary burden was upon the petitioners to prove all those documents including the signatures/thumb impressions of the private respondents thereupon by leading evidence in affirmative. Having observed that, in case the petitioners are not permitted to prove execution of those documents beyond doubt, it would cause serious prejudice to their rights. Moreover, taking specimen of thumb impressions/signatures of Phool Kumar and Jagdish so as to compare with their thumb impressions/signatures over the documents in question i.e. agreement to sell dated 09.06.2005, registered GPA and Will would rather help the Reference Court to adjudicate upon the rights of the parties in a complete and effective manner and accordingly, rather than treating the application moved at the instance of the

petitioners with regard to prayer for leading rebuttal evidence, the same could have been treated for having sought permission to lead additional evidence.

[9]. The Reference Court/trial Court failed to appreciate that the procedural technicalities cannot regulate the rights of the parties and are just means and ways to provide remedial measures and unless there is an intentional and *mala fide* negligence on the part of the party concerned, rather than adopting hair splitting technicalities, the approach of the Courts is required to be more pragmatic by affording all possible opportunity to put forth its case and adopt a liberal approach.

[10]. Accordingly, in view of the aforesaid discussion, the present revision petition is allowed, thereby setting aside the order dated 30.10.2023 passed by the Reference Court and the application moved at the instance of the petitioners for taking thumb impressions of respondents No.4 and 5 namely Jagdish and Phool Kumar, for the purpose of sending those to the Handwriting Expert for comparison with the thumb impressions/signatures appearing over the disputed documents is allowed, however the same shall be subject to payment of cost(s) of Rs.50,000/- to be paid to private respondents on or before the next date of hearing before the Reference Court.

November 28, 2023
Atik

(HARKESH MANUJA)
JUDGE

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