

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

126

CR-155-2024

Date of Decision: January 11, 2024

**Rekha Rani (since deceased) through her LR.s. ....Petitioner(s)**

**Vs.**

**Bachan Singh Salh and another .....Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Kartik Gupta, Advocate  
for the petitioner.

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**SUDEEPTI SHARMA J. (ORAL)**

The petitioner in the present petition has impugned the order dated 29.11.2023 (Anneuxre P-9) passed by learned Additional Civil Judge (Senior Division), Phagwara, whereby application (Annexure P-7) filed by the petitioner seeking permission to examine the handwriting and finger prints expert to take photographs and give report, was dismissed.

2. Facts of the case are that the petitioner filed a suit for possession by way of specific performance of an Agreement to Sell dated 14.02.2014 regarding the land in question. After hearing, learned ACJ, Phagwara vide order dated 04.03.2021, framed the following issues:-

*“ 1. Whether the defendant No. 1 through attorney and defendant No 2 in person executed agreement to sell dated 14.02.2014 in favour of plaintiff? OPP*

2. *Whether plaintiff was and is ready and willing to perform her part of contract? OPP*
3. *If issue No. 1 and 2 are proved, whether plaintiff is entitled to relief of specific performance as prayed for? OPP*
4. *If issue No.2 is not proved, whether plaintiffs entitled to alternative relief for recovery as prayed for?*
5. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 6 *Whether suit is not maintainable in present form? OPD*
7. *Whether plaintiff has not come to court with clean hands? OPD ”.*

3. Evidence of petitioner/plaintiff was closed on 06.03.2023. Defendant No.1 was *ex parte* and the evidence of defendant No.2 was closed on 08.09.2023. Since there was denial on the part of the defendant regarding execution of the Agreement to Sell stating therein that it is forged and fabricated document. Therefore, thereafter, the petitioner moved an application under Order 14 Rule 5 CPC for framing of the additional issue regarding the Agreement to Sell dated 14.02.2014. The said application was allowed on 04.11.2023 and Additional Issue No.7A was framed, which is reproduced as under:-

*“ Whether the agreement to sell dated 14.02.2014 and its endorsement dated 18.02.2014 are forged and fabricated and result of fraud? OPD ”*

4. The onus to prove this issue was on the defendants. To prove her case, the petitioner moved an application dated 16.10.2023 (Anneuxre P-7) for permission to inspect the file and Handwriting and Fingerprints Expert be allowed to take photographs of the signatures and thumb impressions of

defendant No.2. and attorney of defendant No.1 respectively. This application is dismissed vide order dated 29.11.2023. The relevant portion of the same is as under:-

*“ Perusal of the record transpires that plaintiff has filed the present suit for possession by way of specific performance of the alleged agreement to sell dated 14.02.2014, whereas the defendant No.2 while filing the written statement has denied the execution of agreement to sell and pleaded that it is result of fraud and misrepresentation. Under order 18 rule 3 CPC, the plaintiff has no right to lead evidence in rebuttal on issues, of which the onus to prove is on the plaintiff. Hence, in the present case, thus onus to prove that agreement to sell is a valid document and it has been executed between the parties is upon the plaintiff. The defendant since his first appearance in the court has specifically stated that agreement is not a legal and valid document and it is result of fraud. The plaintiff could have examine expert witness in-affirmative at that relevant point of time. Now, when both the parties have concluded their evidence, the plaintiff cannot be allowed to examine the expert witness in rebuttal evidence just to fill up lacuna. Moreover, in case titled as **Subhash Chand Gupta Vs. Jiya Lal Sharm Vol. CLVII (2010-1) The Punjab Law Reporter 550 (P&H)**, it has been specifically held that if the plaintiff failed to lead evidence, by way of examining the handwriting and finger prints expert, in evidence, which was lead, in affirmative, to prove the execution of the agreement to sell, he could not be allowed, to lead the same, in rebuttal. Moreover, in law, there is no provision to lead rebuttal evidence of the evidence, which has been lead in defence. Moreover, the plaintiff has already conducted cross-examination of the expert witness*

*examined by the defendant No.2 in his evidence. So, at this stage, the plaintiff cannot be allowed to lead evidence by rebuttal by examining the expert witness as prayed for. Hence, the application filed by the plaintiff is devoid of any merit and the same is hereby dismissed. ”*

5. Without going into the merits of the present case and after taking into consideration the whole record as placed before this Court, as well as with the able assistance of learned counsel for the petitioner, it has been observed that the application of the petitioner for framing of Additional Issue was allowed vide order dated 04.11.2023 and additional Issue no.7A was framed. The onus to prove the same is on the defendant. Learned ACJ has erred in passing the impugned order. This would amount to rejecting the petitioner to prove his case.

6. In view of the above, and in the interest of justice, impugned order dated 29.11.2023 (Anneuxre-P-9) is set aside. Application moved by the petitioner dated 16.10.2023 (Anneuxre P-7) for permission to inspect the file and allow the handwriting and finger prints experts to take the photographs of signatures and thumb impressions of defendant No.2, is allowed. Ld. Additional Civil Judge (Senior Division), Phagwara, is directed to proceed further in accordance with law to decide Issue No.7A after hearing both the parties.

7. All pending applications, if any, stand disposed of.

(SUDEEPTI SHARMA)  
JUDGE

January 11, 2024  
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Whether speaking/reasoned: Yes/No  
Whether reportable: Yes/No