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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(128)

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Date of Decision: - 25.09.2024

Beer Kaur through her GPA Smt. Sukhwinder Kaur

....Petitioner

Versus

Kuldeep Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anupam Bhardwaj, Advocate
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed by the defendant under Article 227 of the Constitution of India for setting aside the impugned order dated 13.09.2024 (Annexure P-7) whereby the application under Section 45 read with Section 73 of the Indian Evidence Act along with Section 39(1), 72 of The Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as '2023 Act') for granting permission for comparison of thumb impressions of the petitioner Beer Kaur and signatures of her attorney Sukhwinder Kaur has been allowed by the trial Court.

2. Brief facts of the case are that the respondents-plaintiffs (hereinafter referred to as 'the plaintiffs') had filed a suit for specific



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performance of the agreement to sell dated 04.05.2018 which as per the case of the plaintiffs was executed by the defendant/petitioner (hereinafter referred to as 'the defendant') in favour of the present respondents/plaintiffs with respect to land measuring 49 kanals 10 marlas. In the plaint, it was stated that the defendant had agreed to sell the land in question in favour of the plaintiffs for a total consideration of Rs.54,00,000/- and at the time of the execution of the agreement to sell, the defendant received Rs.10,00,000/- from the plaintiffs as earnest money and the sale deed was to be executed on 04.11.2018. In para 2 of the plaint, it was further averred that on 21.11.2018, with the mutual understanding between the defendant and the plaintiffs, the date for the execution of the sale deed was extended up to 25.12.2018 and that an endorsement was made on the back of the original agreement to sell in the presence of the witnesses and at that time, the defendant agreed to execute the sale deed regarding the land in question on 25.12.2018. Further averments had been made to highlight that the defendant had backed out from the same and thus, the suit was filed. The defendant filed a written statement in which pleas were taken that she had never executed any agreement to sell dated 04.05.2018 and that the extension of time on 21.11.2018 was also not executed by her and that the said endorsement was a forged and fabricated document. Replication was filed by the plaintiffs denying the averments made in the written statement.

3. On 09.09.2024, an application (Annexure P-5) was filed by the plaintiffs under Section 45 read with Section 73 of the Indian

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Evidence Act along with Section 39(1), 72 of the 2023 Act for granting permission for comparison of thumb impressions of defendant Beer Kaur and signatures of her attorney Sukhwinder Kaur, with a further direction to defendant Beer Kaur to come present in the Court for taking a specimen of her thumb impressions by an expert. In the said application, it was pleaded that the agreement and the endorsement had been denied by the defendant and that the attorney of defendant Beer Kaur, her daughter Sukhwinder Kaur had signed in English on the agreement to sell (Ex.P1) and had also given her mobile number on the said agreement to sell and during the course of cross-examination, the said Sukhwinder Kaur had admitted that the mobile number which has been given was her mobile number on the agreement to sell (Ex.P1). It was further averred that for adjudicating the matter in controversy and to bring the truth on the file, the comparison of the thumb impression of the defendant Beer Kaur and the signatures of her attorney are very necessary and that since Sukhwinder Kaur had admitted in her cross-examination that defendant Beer Kaur is alive at present, thus, it was prayed that she may come to the Court for giving the specimen of her thumb impressions. A reply was filed to the said application by the defendant in which it was stated that the agreement to sell dated 04.05.2018 was never entered into by the petitioner/defendant and the same was a forged and fabricated document.

4. Learned trial Court considered the entire matter and, on the request made by counsel for the plaintiffs and in order to avoid delay in the proceedings, treated the said application as an application for

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additional evidence and, with respect to the same, recorded the statement of counsel for the plaintiffs. After considering the entire matter, the trial Court allowed the said application, subject to payment of cost of Rs.1,000/- and directed the defendant to appear in person in the Court on 23.09.2024. A perusal of the said order would show that it was observed by the trial Court that the material issue which requires adjudication in the present case is as to whether the agreement to sell and the endorsement bear the thumb impressions of defendant Beer Kaur and the signatures of the attesting witness Sukhwinder Kaur, who was also the power of attorney of defendant Beer Kaur and thus, the evidence on the said aspect including the evidence of an expert is very material for the effective adjudication of the case. It was further observed that although, the said application had been filed at a belated stage but right of the party to prove their case cannot be taken away and the said evidence would help the Court in adjudicating the matter in a proper manner and would also help for bringing the complete truth on the file. In order to do the justice between the parties and to be fair to the defendant, a cost was imposed on the plaintiffs and even the defendant was given an opportunity to rebut the additional evidence to be led by the plaintiffs. It is the said order which has been challenged before this Court by the defendant.

5. Learned counsel for the petitioner has submitted that the onus of proving the agreement to sell in question was on the respondents-plaintiffs and thus, all necessary evidence should have been led by the plaintiffs in affirmative and the plaintiffs cannot be permitted to lead



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rebuttal evidence or additional evidence after the evidence of the plaintiffs as well as the defendant is over. In support of his arguments, learned counsel for the petitioner has relied upon a judgment of the Division Bench of this Court in case titled as “Surjit Singh and others Vs. Jagtar Singh and others”, reported as AIR 2007 Punjab and Haryana 8.

6. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the argument raised by the learned counsel for the petitioner is meritless and deserves to be rejected.

7. It could not be disputed that the main issue in the present case is as to whether the agreement to sell dated 04.05.2018 as well as the endorsement dated 21.11.2018 had been thumb marked by the petitioner or not and had been signed by a witness Sukhwinder Kaur, who is the daughter and also the attorney of the petitioner. The plaintiffs, who had filed a suit for specific performance, had stated that the agreement to sell dated 04.05.2018 is duly executed, whereas, it is the stand of the defendant that the said agreement to sell and the endorsement is a forged and fabricated document. The report of the expert with respect to the thumb impressions on the agreement to sell and endorsement and the thumb impression of the petitioner taken from a standard document, which could best be taken before the Court, would be a very relevant piece of evidence for deciding the case. The trial Court has thus rightly observed that the said piece of evidence would help the Court in properly adjudicating the case and to bring out the complete truth on the file.



Further the trial Court has balanced the right of the petitioner as well, inasmuch as, apart from imposing cost, has also given an opportunity to the defendant to rebut the evidence to be produced by the plaintiffs on the said aspect. Thus, in case any handwriting expert is produced by the plaintiffs then apart from cross-examining the said witness, it would be open to the petitioner to lead her own evidence on the said aspect. In the said circumstances, this Court finds that the impugned order does complete justice between the parties and calls for no interference.

8. A perusal of Section 45 read with Section 73 of the Indian Evidence Act as well as Section 39(1), 72 of the 2023 Act would show that where the Court has to form an opinion to identifying the handwriting or thumb impression of a person, then the opinion, upon that point, of a person, who is an expert in identifying handwriting or thumb impressions would be relevant and for the said purpose, the Court has the power to direct any person to write any words or figures to enable the Court to compare them with the words or figures stated to be written by the said person. The same would also apply with respect to digital signatures and would also, as a matter of necessary corollary, apply to thumb impressions. The argument raised by the learned counsel for the petitioner on the aspect of the respondent being granted opportunity to lead rebuttal evidence with respect to the issue on which onus is on the plaintiffs is meritless. In this regard, it would be relevant to note that the trial Court had considered the said application as an application for additional evidence and had thus also granted an opportunity to the petitioner to



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rebut the additional evidence to be produced by the plaintiffs. Moreover, in the present case, as is apparent from the order dated 20.04.2023 (Annexure P-4), vide which issues were framed, onus of issues No.5 to 13 is on the defendant. Issue No.12 which is relevant for consideration is reproduced herein below: -

“12. Whether the endorsement as alleged is forged and fabricated document/ OPD”

9. The above-said issue which was on the aspect of whether the endorsement is forged and fabricated or not is on the defendant and thus, in rebuttal to the evidence produced by the defendant, it would in any way be open to the plaintiffs to produce rebuttal evidence. Reliance placed upon the judgment of the Division Bench of this Court in **Surjit Singh's (supra)**, does not further the case of the petitioner. The relevant para of the said judgment which has been highlighted is reproduced herein below:-

*27. In our opinion, Order 18, Rule 3 of the CPC 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 CPC. **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***



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the case of Smt. Jaswant Kaur AIR 1983 P & H 210 (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."

10. A perusal of the above-said judgment would show that it has specifically been stated that as per Order 18 Rule 3 of CPC, an option is given to the parties either to produce the evidence in support of the issues or to reserve it by making a statement to that effect and in case such a statement is made, then the same has to be liberally construed to avoid any unnecessary technical obstacles and in case the plaintiff closes his evidence in the affirmative, then the same is to be read as the plaintiff has reserved his rights to lead evidence in rebuttal. A perusal of the paper-book would show that no order has been produced to show that as to on the date when the evidence was closed by the plaintiffs, whether they had closed their evidence in the affirmative or not and as to whether they had reserved their rights or not. In the absence of the said document, it cannot be argued on behalf of the petitioner that no right to the said effect was reserved by the plaintiffs or the evidence of the plaintiffs was not closed in the affirmative.

11. At any rate, this Court is of the opinion that the trial Court has rightly considered the said application as an application for additional evidence and the impugned order has been passed in order to do complete justice between the parties and thus, the same deserves to be upheld and does not call for any interference by this Court under Article 227 of the Constitution of India and the present revision petition being meritless,



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deserves to be dismissed and is accordingly dismissed.

September 25, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes