

CR-3080-2023
Date of Decision: 19.03.2025

...PETITIONER

VERSUS

...RESPONDENTS

Present: Mr. Ravinder Bangar, Advocate and
Ms. Anjali Bangar, Advocate
for the petitioner.

Mr. Nonish Kumar, Advocate for respondent No.1

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition is directed against the order dated 05.11.2022 (Annexure P-4) passed by the Court of learned Civil Judge (Senior Division), Karnal vide which the application (Annexure P-3) moved by the petitioner-defendant Jasmer Singh for appointment of a Handwriting and Fingerprint Expert for comparison of signatures of the petitioner-defendant in the register of the Notary Public Jai Parkash Sharma (Ex. P-12) with the original signatures/handwriting of the petitioner-defendant was dismissed.

2. The facts, as emanating from the revision petition, are that a suit for possession by way of specific performance of agreement to sell dated 19.02.2015 was filed by the respondent-plaintiff Ramesh Kumar. Initially a suit (Annexure P-1) for declaration with mandatory injunction and consequential relief of permanent injunction was filed which was

subsequently amended to a suit for possession by way of specific performance of the agreement to sell dated 19.02.2015.

3. During the course of trial, an application (Annexure P-3) was moved by the petitioner-defendant for comparing his original signatures with his signatures on the register of Notary Public Jai Parkash Sharma (Ex. P-12) by a Handwriting and Fingerprint Expert. The said application was dismissed by way of the impugned order dated 05.11.2022, leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner submits that the trial Court gravely erred in dismissing the application filed by the petitioner-defendant. He submits that in fact, the signatures on the register of the said Notary Public are not that of the petitioner-defendant and to prove the said fact, the examination of a Handwriting and Fingerprint Expert would be essential. Learned counsel submits that the petitioner-defendant later on came to know that in fact, the agreement to sell is a forged and fabricated document as a result of which, the application was moved. He also submits that in case, the signatures of the petitioner-defendant are found to be forged, the respondent-plaintiff would not be in a position to derive any benefit from the agreement to sell dated 19.02.2015.

6. *Per contra*, learned counsel for respondent No.1 submits that there is no illegality in the impugned order. He submits that there was a clear cut admission in the written statement filed by the petitioner-defendant that the agreement to sell had been executed between the parties, though, the intention was never to sell the land and only some amount had been taken as loan by the petitioner-defendant on account of which, the said agreement

was executed and it was agreed that after the repayment of the loan, the said agreement would be returned.

7. I have considered the submissions made by learned counsel for the parties.

8. Paragraph 2 of the amended plaint reads as under:

“That the defendant no.1 is recoded owner in possession of plot having area measuring 88 sq. yards which is 1/38/50 share of land pertaining to Khata no. 6405 khasra no. 1701 (1-13) situated in Bahadur Chand Colony, within Municipal Limits of Karnal. Out of this plot, the defendant no. 1 entered into an agreement to sell dated 19.02.2015 in favour of the plaintiff for sale of 1/3th share of the said plot which is now in the shape of shop i.e. 27 sq. yds. (10 X 25) for a total sale consideration of Rs. 16,00,000/- and as received an amount of Rs. 13,00,000/- as earnest money and it was agreed that the sale deed of the said plot would be executed and registered on 16.05.2015 on payment of balance sale consideration to the defendant no. 1 by Plaintiff. Said agreement was reduced into writing between plaintiff and defendant no. 1 on 19.02.2015 and was got attested from Shri Jai Parkash Sharma, Notary Public, Karnal in presence of witnesses. Copy of said agreement to sell is enclosed herewith.”

9. Preliminary objection No.1 in the amended written statement and paragraph 2 on merits read as under:

“ Preliminary Objection No.1

That the plaintiff has got no locus standi to file and maintain in the present suit because the answering defendant never entered into any kind of agreement for the sale of the suit property in favour of the plaintiff. Rather the facts is that the answering defendant was in need of an amount of Rs. 6,50,000/- for his personal and business need and owing to this reason he borrowed , aforesaid amount from the plaintiff. The plaintiff paid said amount to the defendant No. 1 on monthly interest of Rs. 28 P.M. The plaintiff for security of repayment of the said amount got executed the agreement to sell and it was agreed between the plaintiff and defendant No. I in the presence of witness Multan Singh son of Arjun Singh R/o

Village Buddanpur Abad, Tehsil & Distt. Karnal that as and when the defendant No. 1 will repay the entire amount and interest then the plaintiff will return original agreement to sell to the defendant No.1. The said amount was borrowed by the defendant No. 1 from plaintiff on 19-02-2015 and on that day agreement was reduced into writing which was witnessed by said Multan Singh. The defendant No.1 went on paying monthly interest of Rs. 13000/-PM to the plaintiff on 01-07-2015 • paid amount of Rs. 6,50,000/- in the presence of Multan Singh and after making payment when the defendant No. 1 asked for the return of said original agreement, then he stated that same has been mis-placed somewhere and that he will return the same to the defendant No. 1 as and when same will be traced out to him. But later on he turned dishonest and he instead of returning said agreement to defendant, rather by mis-using the same filed this false and baseless suit. Hence in view of the above said facts the suit is liable to be dismissed.”

On merits

2. That the contents of para No. 2 of the plaint are correct upto the extent that the plaintiff is owner in possession of the suit property but rest of the para is wrong and denied. It is denied that the defendant No. 1 entered into an agreement to sell dated 19-02-2015 in favour of the plaintiff for sale of 1/3rd share of said plot which is now in the shape of shop for a sale consideration of RS. 16 lacs and it is denied that the defendant No. 1 received Rs. 13 lacs as earnest money and it is also denied that the date as 16-05-2015 was fixed for execution and registration of sale deed. The entire story put forwarded in this para is false and baseless. The prevalent market value of the shop of the defendant No. 1 is about 1.50 Crore and as show how it can be imagined that a person will agree to sell the said property for Rs. 16 lacs as alleged. It is worth while to mention here that the agreement to sell in hand of plaintiff was executed as a security for repayment of Rs. 6.50 lacs along with interest accrued thereon, which amount has already been paid to him by defendant No. 1 in the presence of witnesses.

10. It would be relevant to mention here that the said amended written statement is not on record and a copy of the same has been provided by learned counsel representing respondent No.1 during the course of

hearing. It would also be relevant to notice that the contents of the written statement have also been referred by the trial Court while dismissing the application.

11. A perusal of the averments made in the amended plaint shows that there was a categorical admission by the petitioner-defendant about the execution of the agreement to sell, though, the stand was that the intention was never to sell the land and the agreement had been executed only as a security measure since a loan had been obtained by the petitioner-defendant from the respondent-plaintiff. The averments also show that it was categorically mentioned in the written statement that the respondent-plaintiff had agreed to return the original agreement once the amount was repaid. Still further, the prayer in the application was to compare the signatures of the petitioner-defendant in the register of the Notary Public Jai Parkash Sharma with his original signatures and not the comparison of his signatures on the agreement to sell with his original signatures. Under the circumstances, the trial Court rightly dismissed the application by observing as under:

“4. In para no.2 of the amended plaint, plaintiff has alleged that defendant no.1 had executed the agreement to sell in question in his favour for sale of his 1/3 share in the property in question and said agreement was got attested from Jai Parkash Sharma, notary public, Karnal. In the reply given by defendant no.1 to the said para in his amended written-statement, he has contended that he has executed the said agreement to sell for security of payment of Rs.6.50 lacs along-with interest accrued thereon and the said amount has already been paid by him. In the entire second para on merits of his written-statement, defendant no.1 has not specifically denied the fact that the said agreement to sell was got attested from Jai Parkash Sharma, notary public, Karnal. Hence, execution of the agreement in question by defendant no.1 himself and its attestation from Jai Parkash Sharma, notary public, Karnal has not been specifically denied. In such

circumstances, no ground exists to grant permission to defendant no.1 to examine his own handwriting expert in order to compare his signature with the signature in the register of notary public and same will amount to permitting defendant no.1 to lead evidence beyond the scope of his pleadings. Hence, application in hand is hereby dismissed.”

12. I do not find any illegality, whatsoever, in the aforesaid findings recorded by the trial Court, keeping in view the categorical stand taken by both sides in their pleadings. No interference is, therefore, called for in the said order.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

19.03.2025
Prince Chawla

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