

(2012) 09 P&H CK 0242

High Court Of Punjab And Haryana At Chandigarh

Case No: Case No. : C.R. No. 3640 of 2011

Surinder Kumar

APPELLANT

Vs

Sudesh Kumar

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Rajiv Joshi, for the Appellant; Liaqat Ali, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

By filing this revision petition under Article 227 of the Constitution of India, defendant Surinder Kumar has assailed order dated 23.05.2011 passed by learned Additional Civil Judge (Senior Division), Nakodar, thereby permitting plaintiff-respondent to examine Handwriting Expert in rebuttal evidence. Respondent-plaintiff has filed suit against defendant-petitioner inter alia for specific performance of the agreement to sell dated 01.07.2003. The defendant denied the execution of the said agreement and pleaded it to be a forged one. The defendant was permitted by this Court to examine Handwriting Expert in support of his version.

2. The plaintiff moved application Annexure P-2 for permission to examine Handwriting Expert for comparing the alleged signatures of defendant on the impugned agreement with his admitted signatures. Defendant resisted the application by filing reply Annexure P-3. The trial court has allowed the aforesaid application Annexure P-2 by impugned order, which is under challenge in this revision petition.

3. I have heard Learned Counsel for the parties and perused the case file.

4. Counsel for the petitioner contended that onus of issue no. 1 relating to agreement in question was on the plaintiff, and therefore, the plaintiff should have examined the Handwriting Expert in affirmative evidence and he cannot be permitted to examine the Handwriting Expert in rebuttal evidence.

5. Counsel for the respondent-plaintiff, on the other hand, argued that the defendant had taken the plea of the agreement being forged and fabricated and in rebuttal to the said plea, the plaintiff has right to examine the Handwriting Expert in rebuttal evidence.

6. I have carefully considered the rival contentions.

7. Issue no. 1 framed in the suit is reproduced hereunder :-

1. Whether there is lawful agreement in question in favour of the plaintiff ? OPP

8. Plea of defendant regarding the agreement being forged and fabricated is by way of rebuttal of the plaintiff's plea of lawful execution of the agreement. Consequently, the plaintiff had to prove the agreement by leading evidence in affirmative. Comparison of alleged signatures of defendant on the agreement with his admitted or standard signatures would come within the purview of issue no. 1, onus whereof is on the plaintiff. Consequently, plaintiff has no right to examine the Handwriting Expert in rebuttal evidence. Impugned order of the trial court is, therefore, patently illegal and suffers from jurisdictional error. Accordingly, the instant revision petition is allowed. Impugned order passed by the trial court is set aside and application Annexure P-2 filed by the respondent-plaintiff stands dismissed.