
(2012) 09 P&H CK 0327

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5008 of 2012

Iqbal Singh

APPELLANT

Vs

Darshan Singh and another

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: I.P.S. Doabia, for the Appellant;

Final Decision: Dismissed

Judgement

A.N. Jindal, J.

This petition assails the order dated 11.08.2012 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Samrala, allowing the plaintiffs-respondents (hereinafter referred as "the respondents") to examine a handwriting and fingerprint expert in rebuttal evidence and dismissing the application filed by the defendant-petitioner u/s 151 CPC to consolidate two suits titled as "Darshan Singh Vs. Iqbal Singh" and "Darshan Singh Vs. Sikander Singh". In the suit for specific performance, the trial Court had framed issue No. 6, which is as under:-

(vi) Whether the agreement in question is a result of fraud and mis-representation?
OPD

2. The onus to prove this issue was upon the defendant-petitioner (hereinafter referred as "the petitioner") and in order to prove that the agreement to sell was executed by fraud and misrepresentation, the petitioner had examined a handwriting and fingerprints expert. As such, in order to shift the onus, the plaintiffs-respondents had tendered the report of Shri Inderjit Singh, Handwriting and Fingerprints Expert and wanted to examine him as witness. Since the onus to prove issue No. 6 was on the petitioner, therefore, the respondents had every right

to rebut the evidence led by the petitioner on the said issue. The judgment passed by this Court in Surjit Singh and others Vs. Jagtar Singh and other, 2007 (1) RCR (Civil) 537 is not application to the facts of the present case, as in that case, the plaintiff could not be permitted to lead evidence in rebuttal qua the issues, the onus of which was upon him, but in the present case, there is a clear cut issue of fraud and forgery, the onus of which, was on the petitioner, therefore, the respondents have a right to lead evidence in order to rebut the evidence led by the petitioner. The trial Court was right in overruling the objections raised by the petitioner.

3. The second part of the order has not been challenged by the petitioner. Resultantly, finding no merits in the present petition, the same is hereby dismissed.