

(2010) 10 P&H CK 0355

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2567 of 2010

Pawan Kumar and Another

APPELLANT

Vs

Vijay Kumar and Others

RESPONDENT

Date of Decision: Oct. 28, 2010

Citation: (2011) 2 CivCC 255

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Alok Singh, J.

Present petition is filed challenging the order dated 6.3.2010 passed by Civil Judge (Jr. Divn.) Karnal.

2. The brief facts of the present case are that Plaintiffs have filed suit for specific performance of the contract pursuant to the agreement to sell dated 22.12.2000. Defendant (the vendor) denied the execution of the agreement to sell in the written statement. After issues were framed Plaintiff has led his evidence and produced himself as PW-1 and also produced one of the witness of the agreement to sell Rishi Pal as PW-2. Plaintiffs and Rishi Pal one of the witness of agreement to sell allegedly proved the agreement to sell. Thereafter, Defendants have produced Sat Narain son of Dharam Singh, another witness of the agreement to sell as a DW-2 who has stated on oath that agreement to sell does not contain his signature. Thereafter, Plaintiffs have moved an application before the Court below requesting the Court to permit him to get the signature of the vendor - Sat Narain son of Laxman Dass as well as Sat Narain son of Dharam Singh another witness of the agreement to sell DW-2 compared through handwriting and finger print expert in rebuttal. Learned trial Court vide order dated 16.9.2009 rejected the application moved by the Plaintiffs observing therein that Defendant-vendor has denied the execution of the agreement to sell in the written statement, hence, there is no question of granting permission to the Plaintiffs to lead evidence of handwriting and finger print expert

in rebuttal. Feeling aggrieved Plaintiffs-Petitioners have approached this Court by way of filing Civil Revision No. 561 of 2010. Petition was dismissed as withdrawn vide order dated 28.1.2010 with liberty to the Petitioners-Plaintiffs to move an application before the trial Court to examine the expert in rebuttal in view of the judgment of this Court in the case of Jugraj Singh etc. v. Darshan Singh etc. 2000(1) CCC 119 (P&H). Thereafter, Plaintiffs-Petitioners have moved another application before the Court below requesting the Court to permit the Plaintiffs-Petitioners to examine the expert which too was dismissed vide order dated 6.3.2010.

3. I have heard learned Counsel for the parties and perused the record accordingly.

4. Learned Counsel for the Petitioners has placed reliance on the judgment of this Court in the case of Jugraj Singh's case (supra).

5. Learned Single Judge of this Court in the case of Jugraj Singh's case (supra) in paragraph No. 12 has observed as under:

12. From the facts of the present case, it is obvious that the Plaintiffs examined an attesting witness during the course of their evidence. The second attesting witness, however, appeared from the side of the Defendants and denied his signatures on the attestation of the document. It was at this stage that the Plaintiffs wanted the signature of the second attesting witness to be examined by a handwriting expert. In these circumstances, the application of the Plaintiffs is found to be on a sound footing. The Plaintiffs, while producing their evidence in the affirmative, could not anticipate that the second attesting witness would be produced by the Defendants as their witness and that he would deny his attestation on the deed in question. The Plaintiffs had no occasion to get the signature examined at that stage by the handwriting expert. Besides, the Plaintiffs had been permitted by the trial court to take the photographs of various signatures of the second attesting witness available on the file of the case. The trial court had obviously granted such permission to enable the Plaintiffs to get the signatures examined by an expert. Now, by denying the Plaintiffs the right to examine the handwriting expert in rebuttal evidence, the trial Court has fallen in error. Once permission was granted to take the photographs of the disputed and the specimen signature, that exercise should have been carried to its logical end. There is no justification at all in denying the production of the handwriting expert in evidence. Further, the burden to prove some of the issues including an issue to the effect that the relinquishment was a sham transaction was on the Defendants. The case was fixed for the Plaintiff evidence in rebuttal on those issues. Permission to examine the handwriting expert during the evidence in rebuttal was wrongly denied to the Plaintiffs.

6. The facts of the present case are identical to the case of Jugraj Singh (Supra).

7. Ordinarily the Plaintiffs should not be permitted to lead evidence in rebuttal after evidence of the Defendants in view of the fact that Defendants have denied the execution of the agreement to sell in the written statement. However, in the peculiar

facts and circumstances of the case when after evidence of the Plaintiffs another witness of the agreement to sell appeared for the Defendants as DW-2 and has denied his signature on the agreement to sell, hence, it becomes necessary for the Plaintiffs to contradict statement of attesting witness by way of producing handwriting and finger print expert after getting signatures of Defendants as well as DW-2 compared through handwriting and finger print expert.

8. Petition is allowed.

9. Impugned order is set aside.

10. Learned trial Court is directed to permit the Plaintiffs to get the signature of the Defendants and another witness Sat Narain son of Dharam Singh on the agreement to sell compared with the specimen signature of them and, thereafter, to produce the handwriting and finger print expert as a witness.