



CR-840-2025 (O&M) -1-
IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(130)

CR-840-2025 (O&M)
Date of decision:- 01.04.2025

SURINDER SINGH

... PETITIONER

VERSUS

SURINDER DYAL SINGH BANSAL AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sarju Puri, Advocate
for the petitioner.

Service of respondents No.1 to 4 has been dispensed with vide
order dated 04.03.2025.

Mr. Rakesh Bhatia, Advocate
for the respondent No.5.

SUVIR SEHGAL, J. (ORAL)

1. Aggrieved of order dated 02.01.2025, Annexure P-1, passed by the learned Civil Judge (Junior Division), S.B.S. Nagar, petitioner/plaintiff has approached this Court by way of the instant revision petition.

2. Mr. Sarju Puri, Advocate submits that the petitioner has filed a suit for specific performance of an agreement dated 27.12.1992, for sale of land measuring 27 kanal 11 marlas, including a residential house, for a consideration of ₹14850, which has been paid to respondents/defendants No.1 to 4 and upon being served, suit is being contested by the said defendants. He submits that during the pendency of the suit, on an application filed, respondent No.5/defendant No.5 was ordered to be impleaded as a party as she claimed to be in physical possession of the suit property under an agreement to sell dated 07.10.1999. He states that during the course of the trial, petitioner stepped into



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the witness box as PW-1 and denied the execution of the agreement dated 07.10.1999 and on an application filed by respondent No.5, Trial Court vide the impugned order has directed the petitioner to give his thumb impressions/signatures in the Court for comparison from a forensic expert. Counsel urges that as respondent No.5 had set up the agreement to sell, the onus to prove the document was also upon her. It is his contention that Trial Court has been swayed by the statement of the petitioner in his cross-examination, wherein he stated that he does not have any objection in case his thumb impressions are compared with the thumb impression on the disputed document. He has placed reliance upon

(i) Ramnivas Vyas and others Versus H.Srinivasa Bhati and others, (2013) 15 SCC 198;

ii) Subhash Chander and others Versus M/s Active Promoters Pvt. Ltd. 2015 (1) RCR (Civil) 62; and

(iii) Sandrayan Versus S.S. Mariappan, 2010 (33) RCR (Civil) 951.

3. While supporting the impugned order, Mr. Rakesh Bhatia, counsel for respondent No.5 has urged that the comparison of the signatures of the petitioner with the signatures on agreement dated 07.10.1999 would enable the Court to narrow down the controversy and arrive at a proper conclusion. It is his submission that a criminal case is pending against the petitioner for having committed a forgery and despite having made a statement before the Trial Court, petitioner is shying away from giving his thumb impression for comparison. He has placed reliance upon **Abdul Sattar v/s Bashir, 2006(2) R.C.R. (Civil) 535.**

4. I have heard counsel for the parties and considered their respective submissions, besides analysing the documents placed on record.

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5. Section 101 of the Indian Evidence Act, 1872, which is equivalent to Section 104 of Bharatiya Sakshya Adhiniyam, 2023 (BSA), provides that whosoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist. The burden of proving the existence of any fact, is on the person, who asserts it. Section 103 of the Indian Evidence Act, 1872, which is equivalent to Section 106 of BSA, provides that the burden of proof as to any particular fact lies on the person, who asserts it, unless it is provided by any law that the proof of that fact shall lie on any particular person. Dispute between the petitioner and respondent No.5 revolves around the execution of agreement to sell dated 07.10.1999. Respondent No.5 has taken a stand that an agreement was executed, but the petitioner has, in his replication, specifically denied its execution. As respondent No.5 has propounded the agreement, she is required to prove it to substantiate her claim as the burden of proof of its existence is upon her in view of the provisions of the Indian Evidence Act, 1872/BSA. Where the execution of a document has been categorically denied, mere comparison of the signature of the executant with the signatures on the document would not establish that the document stands proved. Party relying upon a document has to establish that the executant affixed his signatures after knowing the contents thereof and no inference can be drawn, even if the signatures on comparison are found to be by the same person.

6. While interpreting the provisions of Indian Evidence Act, 1872, in *Thiruvengadam Pillai Versus Navaneethammal and another, (2008) 4 SCC 530*, Supreme Court held that a party, who propounds the document will have to prove it and as the plaintiff had come to the Court alleging that the first defendant had executed an agreement to sell in its favour and the defendant having denied it, the burden was on the plaintiff to prove the execution and it is



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not on the other side to prove the negative. Similar view has been taken by the Supreme Court in **Ramniwas Vyas's case (supra)** and has been followed by the High Courts. It is evident the Trial Court has clearly erred in failing to appreciate the legal position. Plaintiff is in the process of leading his evidence and an application filed by the defendant for comparison of his thumb impression at this stage is neither maintainable nor could have been accepted by the Trial Court. The law settled by the Supreme Court has not been brought to the notice of this Court in **Abdul Sattar's case (supra)** relied upon by respondent No.5. Impugned order, therefore, suffers from patent irregularity and illegality and cannot be sustained.

7. For the foregoing reasons, petition is allowed. Impugned order, Annexure P-1, is set aside and application filed by respondent No.5 for comparison of thumb impression of the petitioner, is dismissed.

8. Pending application(s), is/are, disposed off.

(SUVIR SEHGAL)
JUDGE

01.04.2025

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No