IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1935 of 2015
Decided on: March 19, 2015.

Sadhu Singh

.... Petitioner

Versus

Harinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Binderjit Singh, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

After the production of defendant's evidence, the plaintiff-respondent No.1 was permitted to place on record Ex.PW4/A, an affidavit of PW-4 Amarjit Kaur in rebuttal evidence. The defendant-petitioner moved an application for discarding the said affidavit on the ground that the deposition in the affidavit is beyond the scope of rebuttal evidence permissible under law. The application for discarding Ex.PW4/A the affidavit of PW-4 Amarjit Kaur has been dismissed by the trial Court.

Learned counsel for the petitioner submits that in the garb of the affidavit Ex.PW4/A affirmative evidence has been permitted to be produced by the plaintiff-respondent No.1 whereas only rebuttal evidence was permissible.

With the assistance of learned counsel for the petitioner, I have considered the controversy.

The plaintiff-respondent No.1 has filed a suit against the Gram Panchayat and the petitioner as defendants for permanent injunction to restrain the defendants from constructing any water drainage in front of the house of the plaintiff-respondent No.1 in village Mehma Swai, District

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Bhatinda from point A to B as shown in the site plan and for restraining the defendant-petitioner from disposing slum water in the pond in dispute on the Southern side of the house of the plaintiff-respondent No.1 through the water drain shown at point A and B. The stand of defendant-petitioner in the written statement is that the plaintiff-respondent No.1 was concealed true picture that point from A to the pond in dispute there is a water channel for the purpose of disposal and drainage of dirty water and the street is a pucca one.

The defendants No. 2 and 3 have also raised a counter claim to restrain the plaintiff-respondent No.1 from encroaching upon the pucca street and the drain.

In context to the above said pleadings and the issues already framed, I am of the opinion that though no specific issue has been framed regarding counter claim but the plea taken by the defendant-petitioner in response to the pleadings of the plaintiff-respondent No.1 has to be finally decided. In view of the above, the affidavit Ex.PW4/A, at this stage, cannot be said to be a piece of affirmative evidence for the plaintiff-respondent No.1 as the said affidavit seems to have been produced to controvert the plea of the defendant-petitioner in the counter claim.

In view of said circumstances, I do not find any infirmity in the order dismissing the application for discarding affidavit Ex.PW4/A when the petitioner-defendant has got a right to cross-examine the witnesses producing Ex.PW4/A.

Dismissed.

(M.M.S. BEDI)
JUDGE

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