

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 3541 of 2015

Date of Decision: May 25, 2015

Sukhwinder Singh

.....Petitioner

Vs.

Col. Bhupinder Pal Singh and ors.

.....Respondents

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

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Present:- Mr.Vijay Sharma, Advocate
for the petitioner.

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

This is defendant's No.1 revision petition against order dismissing this application for putting off the record an affidavit Ex.PW1/B in the shape of examination-in-chief tendered by plaintiff- respondent No.1 at the rebuttal stage, inter-alia on the ground that deposition has been made by the plaintiff- respondent that he is owner to the extent of 1/3rd share in the house which is beyond the pleadings.

I have heard learned counsel for the petitioner. On asking of the Court, he has informed that the cross-examination of the plaintiff-

respondent has not yet been conducted by the counsel for the defendant-petitioner before the trial Court till date.

In context to the issues framed, it has been argued by counsel for the petitioner that onus of certain issues has been wrongly placed. It has also been submitted that at rebuttal stage the averment made in the deposition in affidavit Ex.P8= Ex.PW1/B require to be taken of the record.

I have carefully gone through the contentions of learned counsel for the petitioner. Without expression of any opinion regarding the propriety of the issues framed, onus placed or the extent of evidence which can be produced in rebuttal in this case, I am of the opinion that the plaintiff-respondent certainly has got a right to produce rebuttal evidence as is apparent from the pleadings and circumstances of the case. The irony of the provision of Order 18 Rule 4 incorporated in CPC is that a Court has got no control over the oral depositions which are made as per the definition of evidence under Section 3 of the Evidence Act but the authority of a Judge to decide the admissibility and relevance of the evidence is not curtailed, in any manner. The affidavit placed on record in examination-in-chief as per provisions of Order 18 Rule 4 CPC is akin to an oral statement made by a witness in Court under Sections 3 and 137 of the Evidence Act. The opposite party always gets an opportunity to cross-examine a witness and ask questions to test the credibility and veracity of the statements made on oath as per the provisions of Section 146 of the Evidence Act. It appears to be a case where the plaintiff-respondent has made certain depositions which

as per defendant-petitioner are not relevant or admissible or being contrary to the fact in issues or the pleadings. As per provisions of Section 5 of the Evidence Act, the parties can lead evidence only pertaining to 'fact in issue' and the 'relevant facts'. Whether particular evidence in the present case in the shape of examination-in-chief affidavit Ex.PW1/B is pertaining to the fact in issue or to the relevant facts, cannot be determined by this Court but the defendant- petitioner will have sufficient opportunity to impeach the credibility of the plaintiff- respondent by cross-examining him in context to the pleadings beyond issues framed.

Without expression of any opinion regarding the averments in the affidavit under Order 18 Rule 4 CPC, in dispute, this petition is disposed of with a direction that anything deposed in the affidavit Ex.PW1/B will be subject to the admissibility, reliability and relevance/ authenticity in context to the provisions of Section 5 of the Evidence Act and would be determinable on the basis of the cross-examination conducted by the defendant- petitioner.

May 25, 2015
sanjay

(M.M.S.BEDI)
JUDGE