

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(117)

CR No.4358 of 2015

Decided on: July 13, 2015.

Rajan Pahwa and another

.... Petitioners

Versus

Sheela Bhatia through her LRs

..... Respondent

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

Present: Mr. Namit Gautam, Advocate,
for the petitioners.

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

Vide impugned order dated 12.05.2015, the plaintiff-respondent has been permitted to lead evidence of Ravinder Khosla as PW-9 in rebuttal, dismissing the application of the defendants-petitioners for rejecting the affidavit of PW-9.

Learned counsel for the petitioners has submitted that the contents of the affidavit of PW-9 Ravinder Khosla clearly indicate that the plaintiff has made an attempt to produce evidence in affirmative instead of rebuttal evidence in the garb of statement of said witness.

With the assistance of learned counsel for the defendants-petitioners, I have gone through the pleadings, the issues and find that the plaintiff on the basis of her title acquired by way of sale deed of 1959 has challenged the encroachment by defendants on the suit property whereas the defendants claimed to be bona fide purchasers on the basis of sale deed of the year 1986 from Amar Parkash Bhatia. The issue Nos. 4 to 7 are to be established by the defendants. The plaintiff has got a right to rebut the

evidence produced on issue Nos. 4 to 7. The defendants have produced eight witnesses to establish the issues that the plaintiff was estopped from filing the suit and that the suit is not maintainable being barred by limitation and on account of non-joinder for the parties etc.

With the assistance of counsel for the petitioners, I have tried to appreciate and bifurcate the contents of affidavit of PW-9 to determine as to what part of the affidavit is in the nature of affirmative evidence distinguishable from the rebuttal part.

At this stage, it is certainly difficult to ascertain and make distinction to classify the contents of the affidavit of PW-9. Perusal of the impugned order indicates that the trial Court while permitting the affidavit of PW-9 to be retained on the record for the purpose of cross-examination has safeguarded the rights of the defendants that the objections regarding admissibility and relevance of the contents thereof will be considered at the final stage. Liberty has been given to the defendants-petitioners to raise objections at the time of final arguments.

On asking of the Court, learned counsel for the petitioners has informed that the matter is listed before the trial Court for today for cross-examination of PW-9 by the counsel for the defendants.

In peculiar circumstances of this case, without commenting on the merits and the relevance or admissibility of the contents of examination-in-chief of PW-9 in cross-examination, this petition is disposed of with liberty to the counsel for the defendants-petitioners to object to the admissibility, relevance and reliability of the contents of the affidavit of PW-9 so far as its contents relate to rebuttal. It will be open to the counsel

for the defendants-petitioners to confront the contents so far as the objections of its being of affirmative nature is concerned.

Counsel for the defendants-petitioners will be able to seek expunging of the statement by getting it marked by confronting the same to the witness by putting forth the challenge that the same is in the shape of affirmation and not rebuttal. The objections regarding inadmissibility of contents of affidavit of PW-9 will be finally determined at the time of final arguments.

Disposed of with above said observations.

(M.M.S. BEDI)
JUDGE

July 13, 2015
harsha