

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

CR No. 4496 of 2014 (O&M)
Date of decision: April 20, 2015

Kulwinder Kaur

...Petitioner

Versus

Gurbax Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Sandeep Bansal, Advocate,
for the petitioner.

Mr. Ankur Soni, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

1. The plaintiff who sought to assail a sale alleged to have been executed by him in favour of his daughter-in-law as brought about by fraud took upon himself the burden cast on him and gave his evidence. There was only one issue, the burden of which was on the defendant in relation to the pleading whether the plaintiff had been in any way estopped by his own act or conduct to institute the suit. The defendant was also examined and if there was a right of rebuttal, the rebuttal could have been only with reference to whether the defendant had any evidence regarding the conduct of the plaintiff that would disentitle him to claim the right to the suit property.

2. In his own turn, after taking nine opportunities, the plaintiff

was trying to give evidence by proof affidavit that the defendant was living in his brother's house and there were witnesses who knew that the defendant had married his brother's son. Such evidence is irrelevant or if it were to be treated as relevant for the consideration of fraud, there must have been evidence in affirmative, while giving evidence under issue No.1. The same could not be brought by rebuttal and the court was not justified in affording to the plaintiff any opportunity to give evidence, which was wholly irrelevant or in any event not in issue, the burden of which was on the defendant. The opportunity given to the plaintiff is erroneous and the court ought to eschew the affidavit brought by the plaintiff as rebuttal evidence. The impugned order is set aside and the revision is allowed.

April 20, 2015
prem

(K.KANNAN)
JUDGE