

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

CR No.4732 of 2012 (O&M)

Date of decision : 04.09.2015

Naresh Kumar

...Petitioner

Versus

Narender Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. R.D. Yadav, Advocate for the petitioner.

Mr. P.R. Yadav, Advocate for respondent No.1.

None for respondent Nos.2 and 3.

AMIT RAWAL, J. (Oral)

There is no representation on behalf of respondent Nos.2 and 3.

Position was not different on the last date of hearing also.

Prayer in the present petition is for challenging the order dated 03.08.2012, whereby application (Annexure P-2) filed by the petitioner/plaintiff for leading the evidence vis-a-vis the title of the property in rebuttal, has been declined.

It has been stated in the application that the property is situated within the abadi area of Village Motla Kalan, Tehsil and District Rewari. There is no revenue record of the same and only Ghar No.175, Ahata No.264 in the name of Budha son of Daya Ram forefather of the plaintiff

and since defendant had denied the title of the property, therefore, rebuttal evidence in this regard is required. Trial Court dismissed the application on the ground that there is no issue of rebuttal and onus on issue Nos.1 and 2 to claim the possession, share of title, was inherent in the aforementioned issues.

Mr. P.R. Yadav, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the impugned order and order cannot be said to have been passed without jurisdiction. It is now settled law that plaintiff cannot be permitted to lead evidence in rebuttal, when he failed to lead the evidence in affirmative on issues, the onus of proof of which was on the plaintiff. In this regard, he has cited Division Bench of this Hon'ble Court in *2007(1) RCR Civil 537, Surjit Singh & ors. Vs. Jagtar Singh & ors.*

I have heard learned counsel for parties and appraised the paper book.

Order 18 Rule 3 of Code of Civil Procedure clearly specifies that where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party.

The issues which have been framed in the aforementioned suit reads thus:-

- “1. Whether the plaintiff and proforma defendants are the owner possession of the property as detailed in para No.1 of the plaint shown in green colour in the site plan? OPP*
- 2. Whether the property is ancestral in the hands of plaintiff*

- and proforma defendants, which has been used for tethering their cattle and putting fuel therein? OPP*
3. *Whether the defendants have illegality encroached upon the area measuring 35.18 feet as shown in red colour in the site plan and have raised 5 feet boundary wall with a toilet and bathroom? OPP*
 4. *Whether the plaintiff is entitled for injunction as prayed for?OPP*
 5. *Whether the defendants are the owner in possession with respect to the property existing to the sought of rasta and the construction is existing for the last 20 years?OPD*
 6. *Whether the plaintiff has no locus standi and no cause of action to file the present suit?OPD*
 7. *Relief.”*

On going through the issues, onus of claiming the suit for possession was upon the plaintiff, as plaintiff's claim is on the basis of title. The plaintiff cannot be permitted to lead evidence on issues No.1 and 2 in rebuttal as it had to lead evidence only in affirmative. The ratio decidendi culled out by Division Bench of this Court leaves no manner of doubt that when there is no issue of rebuttal with regard to the title, the plaintiff cannot be permitted to lead evidence in rebuttal.

There is no illegality and affirmity in the impugned order and cannot be said to have without jurisdiction.

There is no merit in the present revision petition.

Revision Petition is wholly mis-conceived.

Petition is accordingly, dismissed.

04.09.2015

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**(AMIT RAWAL)
JUDGE**