

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

Civil Revision No.5152 of 2015

Date of Decision: August 14, 2015

Sonia Gupta

.... Petitioner

vs.

Jatinder Kumar and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Munish Jolly, Advocates for the petitioner.

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 14.07.2015 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.), Chandigarh, vide which the application of the petitioner-plaintiff for summoning the concerned Clerk of the office of Estate Office, Sector 17, U.T. Chandigarh, along with the entire official record pertaining to House No.2040, Sector 44C, Chandigarh in rebuttal, was dismissed on the ground that ownership is to be proved by leading positive evidence. The plaintiff's evidence was led at the initial stage.

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

A perusal of the file shows that the petitioner-plaintiff had sought declaration to the effect that she being Class-I legal heir of Shri Ravinder Gupta is entitled for the partition and possession of the

House No.2040, Sector 44-C, Chandigarh to the extent of ½ share and further declaration to the effect that the alleged Will dated 10.08.2005 registered with Sub-Registrar, Chandigarh at Sr. No.1842, Book No.3, Vol. 278, dated 10.08.2005 is illegal, null and void being forged and fabricated document. Permanent injunction was also sought restraining defendant No.1 from transferring, alienating, mortgaging and disposing off the property in dispute and also raising any construction thereon.

From the pleadings, the trial court framed the issues. Both the parties led their respective evidence and after that the petitioner-plaintiff filed the present application for adducing additional evidence.

Learned counsel for the petitioner-plaintiff contends that he wants to lead rebuttal evidence on issue No.6, which is regarding the fact whether the plaintiff had no cause of action to file the present suit. The burden of this issue is placed on the defendant.

I am of the view that the rebuttal is to be allowed, if the burden of proving the some fact is placed upon the defendant. The petitioner-plaintiff claims title to the suit property on the ground of natural succession while disputing the Will of the defendant. Therefore, the burden to prove the fact that the registered Will is forged and fabricated, was upon the plaintiff-petitioner and it is for her to prove that she is entitled to ½ share in the property being Class-I heir. Cause of action flows from the said fact. On the issue of cause of action, no rebuttal can be allowed.

The evidence sought to be led is the production of entire official record, pertaining to house in dispute. The ownership of the house in dispute by Late Shri Ravinder Kumar Gupta, is not disputed by the parties. Therefore, the rebuttal evidence sought to be led is even otherwise unnecessary.

It being so, I do not find any ground to interfere in the impugned order.

Consequently, the present revision is dismissed.

August 14, 2015
sarita

(KULDIP SINGH)
JUDGE