

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7149 of 2013 (O&M)
Date of decision: 30.03.2015

Jaswinder Singh and another

... Petitioners

versus

Swinder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.S. Sirphikhi, Advocate for the petitioners.

Mr. J.S. Verka, Advocate, for respondent No.1.

K.Kannan, J.

The defendant who is contesting the case for declaration has given his evidence with reference to the purchase made by him from the 10th defendant. The sale according to him made by the 10th defendant is in the capacity as the power of attorney for the plaintiff. Both as regards the purchase as well as power of attorney which he sets up as having been executed by the plaintiff in favour of the 10th defendant, the onus of proof is only on the defendant. The Court was, therefore, justified in allowing for the plaintiff, the benefit of rebuttal.

The issues have not been drafted properly in not making a specific reference even to the validity of the purchase by the 11th defendant who sets up his sale to fend off the plaintiff title. When the plaintiff exercised the right of rebuttal, tendered through proof affidavit, he has disclosed in the 1st paragraph, the basis of his entitlement as a sharer and has averred that he never executed any power of attorney in favour of the 10th defendant and the alleged sale by the 10th defendant to others are not valid and has brought a plea of impersonation and fraud. There is nothing in the affidavit which is

incompetent or contrary to the pleadings. The counsel for the defendant objects to the affidavit on the ground that the plaintiff has already given his affirmative evidence and he, therefore, cannot give a rebuttal evidence and cited before me a judgment of Division Bench referred to above. The contention is untenable and cannot stand a minute's scrutiny. As I have observed, even if the plaintiff has offered any evidence regarding the power of attorney or sale deed earlier, it surely cannot fetter the plaintiff, from the fact that without proof of power of attorney or the sale by the defendant, the plaintiff cannot be non-suited. The plaintiff's affidavit conforms to what is necessary to be decided at the time of trial. There is no warrant for intervention in the revision petition.

The civil revision petition is dismissed with above observations.

(K.KANNAN)
JUDGE

30.03.2015
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