

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

C.R. No. 795 of 2015 (O & M)

Date of decision: 11.02.2015

Sanjay Sharma and another

....Petitioner(s)

Versus

Ashok Kumar and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Rakesh Chopra, Advocate,
for the applicant-petitioners.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3219-CII of 2015

Application for placing on record true typed copies of replication dated 19.03.2013 and reply dated 04.09.2014 as Annexures P-12 and P-13 is allowed, subject to all just exceptions.

The said Annexures are taken on record.

C.R. No. 795 of 2015

Challenge in the present revision petition is to the order dated 12.11.2014 (Annexure P-1) passed by the Civil Judge (Sr. Divn.), Patiala whereby, the application filed by the petitioner-defendant no. 1 for rejection and ignoring the affidavits of the witnesses PW-1, PW-6 and PW-7 has been dismissed. The plea of the petitioner was that the evidence cannot be led in rebuttal and the onus was upon the plaintiff and the evidence should have been led in affirmative. It is also further argued that the evidence is beyond the pleadings.

The trial Court's reasoning to reject the application was that the relevancy could be seen at the time of arguments after the cross examination of the witnesses since the relationship of the parties was admitted. The entire pleadings would have to be seen and case was pending since 04.10.2006. It was further observed that any fact which was beyond pleadings could be put to the witness in the cross examination and the objection would accordingly be sustained at that point of time.

Counsel for the petitioner thus, submitted that the plaintiffs are building their case beyond what has been pleaded in the plaint.

A perusal of the paper book would go on to show that it was a suit for separate possession of half share by way of partition and also for mandatory injunction directing the defendants to pay half share of the plaintiffs of the amount of NSC and the insurance policy received by defendant no. 1 from the Post Office in the LIC department and to hand over the share of the household articles and the gold ornaments left behind by the parents. The trial Court framed the issues on 10.04.2013 and the petitioner-defendant set up a Will dated 16.12.1993 executed by R.K. Sharma, father of the parties in his favour. On the basis of the said pleadings, issue no. 7 was framed whether the Will was legal, valid and genuine and the onus was upon the present defendant.

After the defendant had concluded his evidence, the statements of PW-1, PW-6 and PW-7 were submitted by way of rebuttal. Once the onus of issue no. 7 was upon the present petitioner, thus, in such circumstances, the affidavits have been filed by the plaintiffs in order to meet the case set up by the present petitioner while he led the evidence in rebuttal on the said issue. The right of rebuttal, thus, cannot be denied to

the plaintiffs and, therefore, the trial Court was well justified in rejecting the application by holding that it would take into consideration the contents of the affidavits at the time of cross examination and whether the documents which had been filed were admissible or not.

Accordingly, this Court is of the opinion that the impugned order is well justified and there is no merit in the present revision petition and the same is dismissed.

11.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE