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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4321-2013 [O&M]

Date of Decision : February 5th, 2016

Sant Partap Singh @ Surbirinder Singh

.... Petitioner

Versus

Hari Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Harsh Aggarwal, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India is challenge to the order dated 25.5.2013 [Anneuxre P/16], whereby application filed by defendant No. 37 - Sant Partap Singh @ Surbirinder Singh [Petitioner herein] for issuance of direction to the plaintiff for limiting rebuttal evidence to issue No. [xiii] only, was dismissed by Additional Civil Judge [Senior Division], Sangrur observing that applicant – defendant No. 37 shall have full opportunity to cross-examine the witness on all the points which according to issue No. [xiii] may be relevant or irrelevant.

2. Learned counsel for the petitioner submitted that the matter in controversy revolves around leading of evidence by the parties. In Civil

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Suit No.326/19.08.1994 titled **Hari Singh and others Vs. Sh. Puran**

Chand and others, the following issues were framed :-

- (i) Whether plaintiffs are owner in possession of the suit land? O PD
- (ii) Whether the plaintiffs are entitled to declaration as prayed for?
OPD
- (iii) Whether said deeds executed by defendant No.37 to 40 have no effect on the rights of plaintiffs? OPP
- (iv) Whether Sh. Hardit Singh son of Anoop Singh was originally owner in possession of the suit land? OPP
- (v) Whether mutation No.204 of 05.06.1934 was correctly sanctioned in favour of sons of Sh. Hardit Singh? OPP
- (vi) Whether mutation No.534 dated 12.12.1938 is wrong, illegal, null and void and has no effect on the rights of the plaintiffs and proforma defendants? OPP
- (vii) Whether Tamlik No.1634 dated 23.09.1953 is a result of fraud and have no effect on the rights of the plaintiffs? OPP
- (viii) Whether sale deed mentioned in para No.9 executed by Sant Partap Singh and his brothers have no effect qua the rights of plaintiffs and performa defendants and is liable to be ignored? OPP
- (ix) Whether the property in dispute was joint Hindu Family Property of Bhagwant Singh, Balwant Singh, Kulwant Singh, Fateh Singh, Brinder Singh sons of Hardit Singh? OPP
- (x) Whether suit is within time? OPP
- (xi) Whether the suit is not maintainable in the present form? OPD
- (xii) Whether the plaintiffs have no locus standi to file the suit? OPD
- (xiii) Whether defendants are *bona fide* purchaser for valuable consideration? OPD

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- (xiv) Whether the plaintiffs are estopped from filing the suit by their act and conduct? OPD
- (xv) Whether the plaintiffs have not come to the court with clean hands? OPD 37 to 50
- (xvi) Whether the suit is bad for non-joinder and mis-joinder of parties as alleged in W/S? OPD 37 to 40
- (xvii) Relief.”

3. Learned counsel for the petitioners further submitted that consequent to the order under challenge, the respondents have been permitted to lead additional evidence under the garb of rebuttal evidence, which is against the settled proposition of law. It is prayed that the impugned order be set-aside and the present petition be accepted.

4. Learned counsel for the respondents submitted that the present petition is not maintainable because the Court below has already made all the facts clear that the petitioner shall have a right to cross-examine the witness on all the points which according to issue No. 13 may be relevant or not. Hence, the order under challenge deserves to be upheld.

5. Having considered the submissions made by learned counsel for the parties and on appraisal of the record brought on the file, this Court is of the considered view that the controversy was whether the evidence is to be adduced by way of rebuttal evidence or not and the matter was for consideration before this Court as well in Civil Revision No. 1643 of 2004 and C.R. No. 691 of 2005 and it was decided that the plaintiffs are allowed to lead evidence in rebuttal on issue No. 13. However, the plaintiffs were never allowed to lead the entire evidence afresh or to make statements on all the facts although, onus to prove those facts was upon the plaintiffs themselves. That strictly amounts to leading of additional evidence, which

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is not permissible as per law and the application was also filed for that purpose. It was detailed in the impugned order dated 25.5.2013 [Annexure P/16] that defendant No. 37, petitioner herein, will have full opportunity to cross-examine the witness but the requirement of law is that a party under the garb of rebuttal evidence, cannot be permitted to lead additional evidence.

6. Such a matter was before this Court in **Tejinder Kaur Vs. Kishan Singh and others**, 2008(1) R.C.R [Civil] 485 wherein, view was taken that there is clear difference between rebuttal evidence and additional evidence and the procedure thereof. Additional evidence is with respect to a fact which was not within the knowledge or which could not be known to the applicant inspite of due diligence, however, right to rebuttal is with respect to an issue which was already within the knowledge of the party and the party had reserved its right of rebuttal in that regard. The party cannot be permitted to lead evidence in rebuttal to fill in lacunas in its evidence. Identical view was taken by this Court in **Hanumant Singh Vs. Babu Singh and others**, 2010(2) Civ.C.C. 311.

7. In view of the above, the order dated 25.5.2013 [Annexure P/16], passed by Additional Civil Judge [Senior Division], Sangrur is set-aside and the trial Court is directed to permit the plaintiffs to lead rebuttal evidence only and not the additional evidence. The revision petition stands accepted accordingly.

(SHEKHER DHAWAN)
JUDGE

February 5th, 2016
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