

Civil Revision No.4513 of 2014

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

**Civil Revision No.4513 of 2014
Date of Decision: 12.07.2016**

Vicky Sachdeva

... Petitioner(s)

Versus

Raghubir Rai Dehra and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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. V.K.Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate,
for the petitioner.

Mr. Amarjit Markan, Advocate,
for respondent No.1.

Paramjeet Singh Dhaliwal, J.(Oral)

Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 07.10.2013 (Annexure P-6) and 23.04.2014 (Annexure P-9) passed by learned Additional Civil Judge (Sr. Divn.), Rajpura whereby learned trial Court has dismissed the application for leading evidence in rebuttal in the shape of document expert.

In brief, the facts as averred in instant revision are to the

Civil Revision No.4513 of 2014

effect that the petitioner and proforma respondent Nos.3 and 4 filed a suit for specific performance of agreement to sell dated 28.01.2004 allegedly executed between Lajpat Rai (father of petitioner) and respondent No.1-Raghubir Rai Dehra. Respondent No.1 put in appearance and admitted the execution of the agreement to sell. He also admitted that earlier the stipulation date was fixed as 27.02.2004 but the same was extended on 23.02.2004 for 27.03.2004. On the basis of pleadings of parties, following issues were framed by the trial Court:

- “1. Whether plaintiff is entitled to possession by way of specific performance of agreement to sell dated 28.01.2004?OPP*
- 2. Whether the plaintiff was and always is ready and willing to perform his part of contract?OPP*
- 3. Whether plaintiff is entitled for permanent injunction as prayed for?OPP*
- 4. Relief.”*

Thereafter, the petitioner and proforma respondent Nos.3 and 4 led their evidence in affirmative qua issue Nos.1 to 3. Respondent No.1 also led his evidence and while leading evidence, he examined the expert witness namely Sh. S.P.Singh in respect of the affidavit dated 29.03.2004. In the written statement, respondent No.1 had taken a specific plea that he was always ready and willing to execute the sale deed and the affidavit dated 29.03.2004 is the result of manipulation and fabrication. Thereafter, following additional issues were framed by the trial Court:

- “3-A. Whether the suit of the plaintiffs is not legally maintainable for non-joinder of necessary*

Civil Revision No.4513 of 2014

party?OPD

3-B Whether the defendants always remained ready and willing to perform their part of contract?OPD

3-C. Whether there is no concluded contract between defendant No.1 and Lalpat Rai?OPD

3-D. Whether time was the essence of the contract?OPD”

Thereafter, the application filed by respondent No.1 for not allowing the petitioner and proforma respondents (plaintiffs) to lead evidence in rebuttal was allowed vide impugned order dated 07.10.2013 (Annexure P-6). The petitioner and proforma respondents (plaintiffs) filed application before the trial Court for permitting them to lead evidence on issue Nos.3-A to 3-D and rebut the report of the document expert examined by respondent No.1, but the said application has been dismissed vide impugned order dated 23.04.2014 (Annexure P-9). Hence, this civil revision.

I have heard learned counsel for the parties and perused the record.

Learned senior counsel for the petitioner vehemently contends that although respondent No.1 has not led any evidence on the additional issues and simply relied upon the earlier evidence, but still the petitioner and proforma respondents (plaintiffs) have right to lead evidence in rebuttal. In support of his contentions, learned counsel relies upon ***Pawan Kumar vs. Surinder Pal and another*** 2010 (8) R.C.R. (Civil) 1958.

Civil Revision No.4513 of 2014

On the other hand, learned counsel for respondent No.1 vehemently opposes the contentions of learned senior counsel for the petitioner and contends that respondent No.1 has not led any evidence on additional issues and the additional issues are covered by the issues already existing at the first instance and onus of which was upon the plaintiffs.

I have considered the rival contentions of learned counsel for the parties.

Perusal of file reveals that no evidence has been led by respondent No.1 on the additional issues. Perusal of issue No.1 reveals that the same covers additional issue No.3-C which appears to be framed under mistaken belief. Perusal of issue No.2 reveals that it covers additional issue No.3-B and while framing issue No.3-B, only the wording has been changed. It is settled principle of law that in a suit for specific performance, the onus to prove that the plaintiff has always remained ready and is willing to perform his part of the contract, is on the plaintiff. So far as additional issue No.3-D is concerned, the same is only a legal issue and is also covered under issue No.1 where relevancy of agreement and its stipulation are to be taken care of. The petitioner and proforma respondents (plaintiffs) have already led their evidence in affirmative and respondent No.1 being defendant has only defended his case. It appears that recasting of issues or additional issues framed by the trial Court is apparently unjustified and in such circumstances,

Civil Revision No.4513 of 2014

respondent No.1 has perhaps made a statement that he does not want to lead any evidence. The case law (supra) cited by learned senior counsel for the petitioner is not applicable to the facts of the present case. In that case, onus to prove issue Nos.2 and 3 was on the defendant. However, in the present case, the defendant has led positive evidence to defend his case only. Since no evidence has been led on issue No.3-A, therefore, question of granting liberty to lead rebuttal evidence in this regard does not arise.

In view of above discussion, I do not find any merit in the present revision petition.

Dismissed.

No order as to costs.

12.07.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge