

Civil Revision No.7703 of 2014

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

Civil Revision No.7703 of 2014 (O&M)
Date of decision: 14.01.2016

Ajit Singh and another

....Petitioners

Versus

Bachan Singh and others

....Respondents

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. Bikramjit Aurora, Advocate, for the petitioners.
Mr. A.P.S. Sandhu, Advocate, for respondent No.1.

PARAMJEET SINGH DHALIWAL, J.

Instant revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 30.10.2014 passed by learned Civil Judge (Junior Division), Amritsar, whereby liberty has been granted to the plaintiffs to examine their witnesses in rebuttal by disallowing the objection raised by the petitioners/defendants.

Brief facts of the case are that Bachan Singh – plaintiff filed a suit for possession of land measuring 52 kanals 11 marlas situated in Village Manawala, Tehsil and District Amritsar-II against the petitioners and respondents No.2 and 3, on the ground that petitioners/defendants

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No.1 and 2 had taken forcible possession of the land in dispute and prior to 1997 plaintiff was in possession of the suit land as he acquired the ownership on the basis of tenancy under the Punjab Security of Land Tenures Act. Written statement was filed by the defendants denying the averments made in the plaint. Issues were framed by the trial Court. Evidence of the plaintiff was closed by order of the Court vide order dated 09.01.2014 and petitioners/defendants led their evidence. In rebuttal plaintiff examined PW4 Sanjeev Sharma, Fingerprint and Handwriting Expert to which petitioners raised an objection that the right to rebuttal could not be exercised by the plaintiff at that stage as the evidence of the plaintiff was closed by order vide order dated 09.01.2014, which had already attained finality. Trial Court vide order dated 30.10.2014 disallowed the objection of the petitioners and granted liberty to the plaintiffs to examine their witness in rebuttal. Hence, this revision petition.

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

Learned counsel for the petitioners vehemently contended that the impugned order passed by the trial Court is totally erroneous, perverse and based on surmises and conjectures. Once the evidence of the plaintiff was closed by order of the Court, it amounts to closing of evidence in affirmative as well as rebuttal. Therefore, plaintiff has no right to lead evidence in rebuttal. In support of his contention, learned

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counsel for the petitioners relied upon the judgment of this Court in *National Fertilizers Ltd., Bhatinda v. Municipal Committee, Bhatinda and another, 1982 PLR 322.*

On the other hand, learned counsel for respondent No.1 contended that on an application additional issue with regard to validity of 'Will' was framed. In view of additional issue framed by the Court, plaintiffs have every right to lead evidence in rebuttal. Therefore, the impugned order is just and valid.

I have considered the contentions raised by learned counsel for the parties.

Admittedly, evidence of the plaintiff was closed by order of the Court on 09.01.2014. However, vide order dated 28.11.2013 additional issue No.6A with regard to legality and validity of 'Will' dated 22.11.2006 executed by Bachan Singh was framed and onus to prove was on the defendants. Therefore, plaintiffs have every right to rebut the 'Will' after recasting of the issues by way of framing additional issue. Trial Court has rightly granted opportunity to the plaintiff to rebut the 'Will'.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed.

(Paramjeet Singh Dhaliwal)
Judge

January 14, 2016
R.S.