

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

CR No. 8760 of 2016(O&M)

Date of decision: 23.12.2016

Hari Chand

....Petitioner

VERSUS

Anoop Krishan Sood and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Piyush Kant Jain, Advocate for the petitioner.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 29.11.2016 (Annexure P-6) passed by the Civil Judge (Junior Division), Ludhiana whereby application (Annexure P-4) filed by the petitioner/plaintiff to examine the witnesses in rebuttal has been dismissed.

Counsel for the petitioner has submitted that the petitioner has filed a suit for permanent injunction restraining the defendants from taking forcible possession and interfering in peaceful possession of the plaintiff on four shops measuring 75.55 square yards bearing property No.B-IV-S-17/1120 situated in Mohalla Sudan, Ludhiana and further restraining the defendants from causing any type of damage to the roof and walls of the four shops and not to interfere in the minor repair work of the roof and walls of the said shops, on the premise that Mahant Piara Nand let out shop No.1 and 2 to the plaintiff vide rent note dated 27.10.1978 and handed over its possession to the petitioner. On 14.05.2003, the said Mahant agreed to sell shops No.1 to 4 to the plaintiff at the rate of Rs.8,000/- per square yard

by way of agreement to sell dated 14.05.2003. An amount of Rs.1,00,000/- towards earnest money was paid to the Mahant at the time of agreement dated 14.05.2003 and the sale deed was agreed to be executed upto 30.04.2004 on receipt of balance sale price. However, on 20.04.2004 another sum of Rs.1,15,000/- was received by the Mahant from the plaintiff and sale deed was agreed to be executed up to 30.12.2004. On 20.12.2004, another amount of Rs.85,000/- was received by the Mahant and the date for execution of the sale deed was extended upto 30.06.2005. On 14.06.2005, Mahant executed a fresh agreement in favour of the plaintiff by receiving an amount of Rs.50,000/- and acknowledged receipt of total amount of Rs.3,50,000/- and agreed to execute the sale deed upto 25.01.2006 but the date was again mutually extended upto 25.06.2006. Another agreement was executed and eventually the date for execution of the sale deed was lastly extended up to 02.12.2007 but the Mahant failed to execute sale deed of the property in favour of the plaintiff.

Counsel for the petitioner has submitted that on the basis of pleadings of the parties, the trial Court framed issues on 19.11.2013, reproduced in para 5 of the grounds of revision. It is further submitted that as the defendants in the written statement have challenged competency of Mahant to create tenancy or execute agreement to sell with the plea that the suit property is the ownership of Panchayat Mohalla Sudan, registered in the name of Dharamshala Baba Mala and they have adduced evidence in order to discharge the onus of issues with regard to suit being not maintainable and the plaintiff having no locus standi to file the suit, a serious prejudice shall be caused to the petitioner in case he is not

permitted to adduce evidence by way of rebuttal to the evidence led by the defendant.

Another submission made by counsel is that after closing of evidence by the defendants/respondents, the trial Court fixed the case for rebuttal, sufficient to show that the petitioner is entitled to examine the witnesses in rebuttal evidence, therefore, the trial Court has committed a serious error rather illegality in dismissing the application. In the alternative, counsel has submitted that in case the petitioner is not permitted to adduce evidence in rebuttal, any evidence led by the defendants to establish their plea that the suit property belongs to Panchayat Mohalla Sudan should not be allowed to cause prejudice to rights of the petitioner in any subsequent litigation between the parties involving question of title to the shop in question. He has submitted that the defendants have not denied possession of the suit shops by the petitioner.

I have heard counsel for the petitioner, perused the paper-book particularly the plaint (Annexure P-1), written statement (Annexure P-2), application to examine the witnesses in rebuttal and the order impugned.

A perusal of the plaint leaves no manner of doubt that the plaintiff has filed a simplicitor suit for injunction restraining the defendants from interfering in his possession of the suit property with certain other reliefs qua injunction detailed in para 13 of the plaint. Needless to say that in a suit for injunction, the Court need not to examine the question of title nor findings recorded in a suit for injunction qua title constitutes res judicata in subsequent proceedings qua ownership. That being so, the

petitioner cannot be allowed to adduce any evidence qua the question of ownership of the suit property. This apart, once the petitioner has opened his case and adduced evidence qua all the issues including the ones of which the onus has been placed upon the defendants and has not reserved his right to adduce any evidence in rebuttal, he cannot be permitted to lead any evidence to rebut the evidence adduced by the defendants. In this context, reference can be made to a Division Bench judgment of this Court **Avtar Singh and another Vs. Baldev Singh and others**, CR No.2203 of 2010 decided on 21.11.2014.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in *limine*. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

DECEMBER 23, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no