

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

**CR No.295 of 2016(O&M)
Date of Decision: 21.08.2017**

**SatyapalPetitioner
Vs
Mukesh Devi and othersRespondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sanjay Mittal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Respondents No.1 to 5 did not appear despite service. As a consequence of that, they were proceeded against ex parte vide order dated 21.10.2016. Service qua respondent No.6 was ordered to be dispensed with being proforma in nature.

[2]. In view of above, I proceeded to decide this case on the basis of arguments raised by learned counsel for the petitioner.

[3]. Petitioner has assailed the order dated 18.12.2015 passed by Civil Judge (Junior Division), Mahindergarh, vide which application filed by the petitioner for leading rebuttal evidence in respect of issue No.7 was dismissed.

[4]. As per record, Dharminder Singh i.e. defendant/respondent No.3 filed a counter claim and issue No.7

was framed specifically thereof to the following effect:-

“Whether defendant No.3 is entitled to relief of injunction against plaintiff as mentioned in the counter claim filed by defendant No.3? OPD

[5]. In the application filed under Order 18 Rule 3 CPC, petitioner has specifically mentioned in para Nos.4 and 6 that defendant No.3 has sought injunction in the counter claim in respect of the property in question for which issue No.7 was specifically framed. After conclusion of the evidence of the plaintiff, defendant No.3 has also led his evidence in respect of aforesaid issue No.7.

[6]. At the stage of rebuttal, plaintiff/petitioner intends to lead evidence in rebuttal in respect of issue No.7, the onus of which was fastened upon defendant No.3, therefore, there is no impediment in allowing the prayer of the plaintiff to lead evidence in rebuttal in respect of an issue, the onus of which was not on the plaintiff, rather, the onus was on defendant No.3.

[7]. I find that the aforesaid submission is worth acceptance. Perusal of the order dated 17.10.2013 passed by Civil Judge (Junior Division), Mahendergarh shows that out of total 8 issues, issue No.7 was specifically framed and the onus was fastened upon defendant No.3 to prove the issue in question. Apparently, defendant has already led his evidence in

respect of the said issue. Now at this stage, the plaintiff has all the rights to rebut the evidence of the defendant.

[8]. In view of above, this revision petition is accepted. The impugned order dated 18.12.2015 passed by Civil Judge (Junior Division), Mahendergarh is hereby set aside. Necessary consequences to follow.

August 21, 2017.

Prince

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No