

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

CR No.4528 of 2017 (O&M)
Date of decision : 04.12.2017

Smt. Shashi Kanta

...Petitioner

Versus

Kashmir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harminder Singh, Advocate for the petitioner.

Mr. R.S. Sidhu, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.4 is in revision petition against the orders dated 17.05.2017 and 05.07.2017 passed by the trial Court.

The plaintiff had filed a suit for mandatory injunction directing defendant Nos.1 and 2 to transfer the allotment of residential plot bearing No.R-500 in the name of the plaintiff. After the trial, the suit was dismissed. However, learned First Appellate Court in appeal chose to frame two additional issues and remanded the case back to the trial Court. The relevant directions issued by the learned First Appellate Court are as under:-

“20. In the opinion of this Court the learned trial Court has omitted to determine a question of fact as to the legal status of the ownership of the plot in question on the date of institution of the suit and the forgery of signatures of defendant No.4 as alleged. It would therefore in the interest

of justice if the following additional issues are framed namely:-

1A. Whether plaintiff has forged the signatures of defendant No.4 on the affidavit submitted on 20.03.2009? OPR No.4.

1B. What is the legal status of allotment/transfer of the suit property? OPR No.1 and 2.

21. Accordingly the case is remanded back to the learned trial Court to decide the said issues and thereafter to decide the matter afresh with liberty to the parties to lead any additional evidence, if required, by availing one substantive opportunity to be availed within a period of 15 days, so that the matter can be decided earlier and preferably within three months. The parties are directed to appear before the learned trial Court on 16.02.2017. Ahlmad is directed to send the copy of this judgment alongwith Lower Court Record immediately. File of present appeal be consigned to judicial Record Room.”

It appears that after the remand, defendant No.4 was given opportunity to lead evidence but she could not lead any evidence. Defendant Nos.1 and 2 have led their evidence. When the plaintiff was given opportunity to lead evidence, defendant No.4 objected thereto on the ground that such evidence does not fall within the scope of rebuttal evidence.

As extracted above, the orders passed by the learned First Appellate Court while remanding the case to the trial Court is clear, parties were given liberty to lead any additional evidence.

In view of the aforesaid directions, the plaintiff has to be given opportunity to lead additional evidence after remand. The Court has not ordered that plaintiff would be granted only opportunity to lead only

rebuttal evidence.

Learned counsel for the petitioner-defendant No.4 has further submitted that vide order dated 05.07.2017, even the opportunity to cross-examine the witnesses already examined by the plaintiff has been treated as nil.

On the other hand, learned counsel for the plaintiff has submitted that since counsel for defendant No.4 had refused to cross-examine, therefore, the cross-examination has to be treated as nil.

Taking into consideration these facts, this revision petition is disposed of by granting opportunity to the counsel for defendant No.4 to cross-examine the witnesses produced by the plaintiff on the next date of hearing. However, the revision petition against the order dated 17.05.2017 is dismissed.

It shall be the duty of the plaintiff to produce all the witnesses which have been examined after remand on the next date of hearing.

The trial Court would grant ample opportunity to counsel for defendant No.4 to cross-examine the witnesses. However, this opportunity shall be concluded within a period of one month from the date of receipt of certified copy of this order.

In view of the above, revision petition is disposed of.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

04.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No