

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

CR No. 7035 of 2015

Date of Decision: 04.07.2017

NIRMAL SINGH

-PETITIONER

VS

RUMINDER KAUR

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Gupta, Advocate,
for the petitioner.

Mr. Bikramjit Aroura, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed order dated 05.10.2015 passed by Civil Judge (Junior Division), Tarn Taran vide which application of the petitioner for leading expert evidence in rebuttal or by way of additional evidence has been rejected.

Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 31.01.2013 in respect of double storey building. The execution of agreement to sell was denied by the defendant. Necessary issue was framed in respect of execution of agreement to sell and the onus was on the plaintiff which was legally required to be discharged by leading evidence in affirmative. The plea of denial taken by the defendant was further substantiated by them by leading

evidence of expert in their defence. The issue involved in the present case is as to whether plaintiff can be allowed to lead evidence in rebuttal or by way of additional evidence in respect of an issue, the onus of which was on the plaintiff?

In view of view expressed in **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537 (DB); Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794** and **Avtar Singh vs. Baldev Singh, 2015(1) PLR 230**, it can be concluded that the plaintiff is not entitled to lead expert evidence in rebuttal in respect of an issue, the onus of which was on him.

In **Ram Kumar vs. Raj Kumar and others, 2014(3) CivCC 453**, it was held that the hand writing expert cannot be allowed to be examined in rebuttal and even cannot be allowed to be examined by way of additional evidence as this was well within the knowledge of the plaintiff-petitioner at the time when he was leading evidence in affirmative. The party cannot be allowed to fill lacuna by adducing evidence without satisfying the Court that such an evidence is required for effective adjudication of the case.

In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal vs. Ajmer Singh and another, 2014(4) Law Herald 3627**, it was held that the additional evidence cannot

be allowed to be led by the plaintiff when the evidence was within his knowledge at the time of leading evidence in affirmative.

In view of stand taken by the defendant in the written statement, plea of denial has already been projected even before examining the expert in defence evidence.

In view of above, the proposition as propounded by learned counsel for the petitioner on the strength of **Sham Lal vs Raj Kumar, 2013(1) law Herald, 367** cannot be entertained.

Accordingly, this petition is dismissed.

04.07.2017
jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No