

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

CR No.7106 of 2013

Date of Decision: 28.11.2017

Kishan

.....Petitioner

Versus

Naseeb and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Harish Nain, Advocate
for the petitioner.

Mr. Sumit Sangwan, Advocate and
Mr. Vikrant Rana, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Petitioner has challenged the order dated 14.11.2013 passed by Additional Civil Judge (Senior Division), Charkhi Dadri vide which application of the petitioner for leading evidence in rebuttal was dismissed.

[2]. Plaintiff/petitioner filed a suit for declaration and joint possession with the following prayer:-

“It is, therefore, prayed that a decree for declaration to the effect that the plaintiff is owner in possession of 6K-0M of land being 1/48 share out of total land measuring 287K-11M comprised in khewat No.91/85 khatoni No.209 to 219 as per jamabandi for the year 1996-97 situated in the revenue estate of Village Malkose Tehsil Charkhi Dadri, District Bhiwani

and decree in Civil Suit No.528 of 1984 titled as 'Naresh Vs. Smt. Siria' widow of Sudhan Mauza Malkose passed by SJIC Charkhi Dadri, decided on 10.08.1984 is wrong, illegal, null and void and is liable to be set aside and further revenue entries regarding land in dispute in favour of defendant No.1 to 3 and prior to them in favour of Siria widow of Sudhan son of Raje Ram are wrong, illegal, null and void and are liable to be corrected and in the alternative if the plaintiff is found to be out of possession than decree for joint possession of suit property may kindly be passed in favour of the plaintiff and against the defendant No.1 to 3 with costs. Any other relief to which the plaintiff is found entitled may also kindly be granted."

[3]. Raja Ram @ Raje Ram was the common ancestor of the parties. He was owner of agricultural land in two villages namely Neemri and Malpose. He had four sons namely Ganga Bishan, Jugti, Balu and Sudhan. Sudhan died issueless in the year 1935 leaving behind Siria as widow. After the death of Sudhan, Siria performed kareva marriage with Jugti i.e. real brother of deceased Sudhan and gave birth to two sons i.e. the petitioner and Rampal. The onus of proving aforesaid fact was on the plaintiff. Defendants have specifically denied the fact that

Siria ever performed kareva marriage with Jugti. The stand of the defendants was that Rampal was born to Jugti and Nimbo Devi and Siria never performed kareva marriage with Jugti.

[4]. Trial Court while rejecting the application held that since defendants have taken the aforesaid plea in the written statement, therefore, the plaintiff was required to lead this evidence in affirmative. According to the trial Court, plaintiff is not entitled to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself.

[5]. At the time of issuance of notice of motion on 21.11.2013, following order was passed:-

“Learned counsel for the petitioner contends that the petitioner is entitled to lead rebuttal evidence and he wants to examine one Mahendri besides producing some documents.

Learned counsel for the petitioner contends that in order to controvert the version of DW-1, the petitioner-plaintiff wants to examine one witness Mahendri apart from tendering documents i.e. voter list and one mutation, but the trial Court vide impugned order refused to grant the said relief.

Issue notice of motion of this civil revision to the respondents Nos.1 to 7 only for 18.12.2013.

Pronouncement of the final judgment in the case shall remain stayed till further orders.”

[6]. Learned counsel for the respondents vehemently

opposed the prayer on the ground that the application for leading evidence in rebuttal is conspicuously silent with regard to voter list and mutation.

[7]. Evidently, the prayer of the petitioner at the time of preliminary hearing was in respect of examining Mahendri besides tendering voter list and one mutation in evidence in rebuttal. On 19.05.2016, learned counsel for the petitioner sought time to seek instructions, if at the time of closing of the evidence of the plaintiff/petitioner, he reserved any right to lead any evidence in rebuttal or not.

[8]. Today, photocopy of order dated 12.07.2013 passed by Additional Civil Judge (Senior Division), Charkhi Dadri has been produced to show that at the time of closing of the plaintiff evidence, the plaintiff reserved the right to lead rebuttal evidence and the case was adjourned to 07.08.2013 for evidence of the defendants at their own responsibility.

[9]. It is true that in the absence of such reservation, the plaintiff is not entitled to lead evidence in rebuttal in respect of an issue, the onus of which was upon him, but if the plaintiff reserves such right under order 18 Rule 3 CPC, then he has a right to lead evidence in rebuttal. Reference can be made to **Avtar Singh Vs. Baldev Singh, 2015(1) PLR 230 (DB).**

[10]. In view of facts and circumstances of the case, I set

aside the impugned order dated 14.11.2013 passed by Additional Civil Judge (Senior Division), Charkhi Dadri and allow the revision petition, thereby allowing the application for leading evidence in rebuttal i.e. examination of Mahendri, tendering of voter list and mutation.

[11]. Disposed of.

28.11.2017
prince
Whether Reasoned/Speaking

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Whether Reportable

Yes/No