

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

CR No.799 of 2016

Date of Decision: 09.08.2017

Vijay Kumar

.....Petitioner

Versus

Chanan Singh and another

... Respondents

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

Present: Mr. Sumeet Goel, Advocate and
Mr. Krishan M. Vohra, Advocate
for the petitioner.

Mr. Rakesh Nagpal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed this revision petition against the order dated 13.01.2016 passed by Additional Civil Judge (Senior Division), Guhla, District Kaithal, vide which respondents were allowed to lead expert evidence in rebuttal.

[2]. Plaintiffs/respondents filed a suit for possession by way of specific performance of the agreement to sell dated 07.03.2013.

[3]. The suit was contested by the defendant/petitioner. The factum of agreement to sell dated 07.03.2013 was denied, rather claimed to be manufactured, forged and fabricated document. Even on merits, in para No.3 of his written statement, the defendant claimed the document to be forged and fabricated. Trial Court framed the following issues on

19.09.2015:-

“1. Whether plaintiff is entitled to the decree for specific performance of the agreement to sell dated 07.03.2013 as prayed for? OPP

2. If issue No.1 is not proved, whether plaintiff is entitled to a decree for recovery of Rs.1,47,81,250/-? OPP

3. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for? OPP

4. Whether suit is not maintainable? OPD

5. Relief.”

[4]. Onus of issue No.1 was on the plaintiffs. Onus of issue No.4 was on the defendant. The plaintiffs led their affirmative evidence and thereafter, evidence of the defendant was also completed.

[5]. Plaintiffs/respondents filed an application for calling the record of Vasika No.141/1 dated 18.05.2012 for comparing the signatures of defendant Vijay Kumar with the questioned signatures on agreement to sell at the stage of rebuttal evidence. The said application was filed on the ground that the defendant has produced an expert evidence in his defence and that prompted the plaintiffs to seek leading of expert evidence at rebuttal stage. Perusal of the issues would show that issue No.1 was to be proved by the plaintiffs on the basis of their evidence. The onus was on the plaintiffs to lead evidence in their

affirmative. In the written statement filed by the defendant/petitioner, there was a specific denial in respect of agreement to sell dated 07.03.2013. The onus was heavily on the plaintiffs to prove issue No.1.

- [6]. Learned counsel for the petitioner on the strength of observations made 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** submitted that the plaintiffs cannot lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiffs themselves. Plaintiffs did not reserve their right to lead rebuttal evidence and therefore, allowing the application even on the basis of issue No.4 by the trial Court was wholly unsustainable.
- [7]. Learned counsel further contended that in **Pappu @ Rai Singh Vs. Smt. Chander Wati and others, 2012(4) PLR 607** as relied by the trial Court, issue No.5 was conversely placed, wherein the onus of agreement dated 15.01.2002 being fraudulent was on the defendant. In view of above, when the defendant adduced the expert evidence in defence, the plaintiffs were held entitled to rebut the same by way of rebuttal.
- [8]. In the instant case, no such proposition is involved inasmuch as that the onus in respect of issue No.1 was on the

plaintiffs themselves from the very beginning. Defendant/petitioner has specifically denied the agreement to sell dated 07.03.2013 in his written statement, rather claimed the agreement to sell to be forged and fabricated. In view of above, issue No.1 was rightly framed, in which the plaintiffs were required to lead affirmative evidence without waiting for defence evidence led by the defendant. In the absence of such affirmative evidence and even in the absence of reservation of right to lead evidence in rebuttal, the plaintiffs cannot be permitted to lead evidence in rebuttal, particularly in respect of issue No.1, the onus of which was on the plaintiffs themselves.

[9]. The ratio laid down in **Surjit Singh's case (supra)**, **Jagdev Singh's case (supra)** and **Avtar Singh's case (supra)** fully applies to the facts of the present case. Issue No.4 is in respect of non-maintainability of the suit, which is dependent upon the cumulative effect of findings to be recorded by the trial Court. Even otherwise, the plaintiffs cannot take benefit of onus of this issue as this issue cannot be treated to be rebuttal in nature. Since the defendant has specifically denied the very execution of agreement to sell, therefore, the assertion of the learned counsel for the respondents based on **Pappu @ Rai Singh's case (supra)** is wholly untenable. Issue No.5 framed in the said suit was conversely placed so as to place onus of the

issue on the defendant. When there was no such onus on the plaintiffs, the plaintiffs were held entitled to lead rebuttal evidence in respect of issue qua which the onus was discharged by the defendant in his defence evidence.

[10]. It is a settled principle that the right to rebut cannot be exercised unless the onus of an issue is upon the other party and the party reserved the right before the evidence of other party is commenced.

[11]. In the instant case, the facts are totally different than the cited case. In view of nature of controversy involved, I am of the considered opinion that the plaintiffs are not entitled to lead any evidence in rebuttal in respect of issue No.1, the onus of which was on the plaintiffs themselves.

[12]. In view of above, this revision petition is accepted. Impugned order dated 13.01.2016 passed by Additional Civil Judge (Senior Division), Guhla, District Kaithal is set aside. The application for leading expert evidence in rebuttal is hereby dismissed.

09.08.2017

prince

Whether Reasoned/Speaking

Whether Reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No