

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 1053-2014 (O&M)

Date of decision: 09.02.2018

Municipal Corporation Ludhiana and another

.....Petitioners

versus

Kanwaljit Singh (since deceased through LRs)

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.H.P.S.Ghumman, Advocate for the petitioners
Mr.Namit Gautam, Advocate for the respondent

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

Impugned in the present revision is the order dated 6.8.2012, passed by learned Additional District Judge, Ludhiana, vide which, in rebuttal to the additional evidence, to be led by the defendants, affidavit of DW2 Kuljit Singh, DW3 Kanwaljit Singh and DW4 Surinder Sharma are ordered to be taken off the record.

It comes out that appeal is pending before learned District Judge against the judgment and decree of the trial Court. Suit of the plaintiff was dismissed. An application filed by the plaintiff for permission to lead additional evidence was allowed to the extent that Halqa Patwari was allowed to be examined to prove change of khasra numbers. Halqa Patwari was also to demarcate the land in dispute on the basis of the khasra numbers with the guidance of Halqa Kanungo as per instructions of the government. Plaintiff led said evidence and when the additional evidence

was to be rebutted, defendants sought to be produced the affidavit of the said witnesses. The affidavits of DW2 and DW4 are on file. However, affidavit of DW3 is not on file. Affidavit of DW2 shows that Kuljit Singh, Junior Draftsman, Municipal Corporation Ludhiana was sought to be produced to prove the site plan and the photographs and DW4 Photographer was sought to be examined to prove certain photographs. However, the affidavit of DW3 has not been placed on file by the parties.

Learned counsel for respondent has vehemently argued that rebuttal to the additional evidence can be allowed only to the extent of rebutting the additional evidence led by a party and not beyond that. It is contended that in the present case, defendants want to reopen the entire case and make statement about the case which was to be led in affirmative evidence. Reliance has been placed on the judgment of the Apex Court in Suresh Chandra Das vs. Maheswar Das and others, 1986 AIR (Orissa) 13.

On the other hand, learned counsel for the appellants has relied upon the authorities in Sukhwinder Singh vs. Col. Bhupinder Pal Singh and others, 2015(8) RCR (Civil) 594, Chhinder Singh and others vs. Charan Kaur and others, 2015(8) RCR (Civil) 566 to press that if the evidence is being led beyond the pleadings, it cannot be taken off the record, as ordered by the learned Additional District Judge. However, if the evidence is beyond permissible limits, the same can be ignored.

I am of the view that so far as affidavit of DW2 and DW4 are concerned, these could be relevant to rebut the additional evidence. Therefore, these were wrongly taken off the record. Order qua the said DW2 and DW4 stands set aside. So far as affidavit of DW3 is concerned, if he has submitted the affidavit in examination-in-chief and want to make a

statement, which is beyond the scope of additional evidence led by the plaintiff, then the Court, while finally deciding the case, can ignore the statement, which is beyond the scope of additional evidence led by the plaintiff. However, the affidavits could not be taken off the record as a whole.

With the above noted observations, the impugned order stands set aside and the revision is allowed. Since, the appeal pertains to the year 2006 and on account of the pendency of present revision and the stay granted by this Court, it has now become 11 years old, therefore, the lower appellate Court is directed to decide the same within two months from the date of receipt of a certified copy of this order.

09.02.2018*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:	Yes
Whether Reportable:	No