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

CR No.1215 of 2017

Date of Decision: 02.07.2018

Ravinder Kumar Mittal and another

..... Petitioners

Vs

Munish Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.S. Kathuria, Advocate
for the petitioners.

Mr. Udit Garg, Advocate
for respondents No.1 to 4.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners/defendants No.2 and 3 have challenged the order dated 31.01.2017 passed by Civil Judge, Yamuna Nagar vide which the application filed by the plaintiffs/respondents for leading additional evidence was allowed.

[2]. Defendants No.2 and 3/petitioners have pleaded in their written statement that defendant No.1 was *Karta* of the family till 2009 and the purchases made by them were from their own funds as they had separated business from defendant No.1. They separated from defendant No.1 in the year

1984. The issues were framed on 06.09.2014 to the following effect:-

- “1. Whether plaintiff is entitled for the relief of declaration as prayed for? OPP*
- 2. Whether plaintiff is entitled for the relief of permanent injunction as prayed for? OPP*
- 3. Whether plaintiff is liable to be rejected on the ground of Benami transaction? OPD*
- 4. Whether plaintiffs are estopped from filing the suit by their own act and conduct? OPD*
- 5. Whether suit is time barred? OPD*
- 6. Whether suit is not maintainable in the present form? OPD*
- 7. Whether suit is barred under Order 23 Rule 1(3) CPC? OPD*
- 8. Relief.”*

[3]. Plaintiffs led their evidence. Perusal of the issues would show that there was no issue struck qua the aforesaid stand taken by defendants No.2 and 3/petitioners. Petitioners have led their evidence in respect of purchases made by them as per their stand. Since there was no issue, therefore, the plaintiffs could not have led evidence in rebuttal for the issue, the onus of which could have been upon defendants No.2 and 3.

[4]. In my considered opinion, application for leading additional evidence is maintainable and the Court has rightly

taken cognizance thereof by allowing the same. However, it is made clear that the prayer in terms of application for additional evidence was only to rebut the evidence of purchases made by defendants No.2 and 3/petitioners. It would be appropriate to confine the additional evidence strictly to rebut the evidence of defendants No.2 and 3/petitioners as per their stand.

[5]. Disposed of .

July 02, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No