

215

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-167-2015 (O&M)

Date of decision : 20.03.2018

Lakhbir Singh @ Raja and another

... Petitioner(s)

Versus

Rakesh Kumar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.R. Bansal, Advocate
for the petitioners.

Mr. Veneet Sharma, Advocate
for the respondent(s).

Mr. Gaurav Kalsi, Advocate for
Mr. H.S. Batth, Advocate
for respondent No.6.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the order dated 18.12.2014 (Annexure P-1) at the instance of the petitioners-defendants, whereby the trial Court after closing the evidence of the defendants had posted the matter for rebuttal evidence, if any as well as for arguments.

Learned counsel for the petitioners-defendants submit that the respondents-plaintiffs had filed the suit for possession by way of specific performance of agreement to sell dated 27.05.2003 in respect of the suit property and the evidence was closed in affirmative. The aforementioned suit was contested by the petitioners-defendants and the trial Court on the basis of the pleadings framed the following issues:-

- 1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*

2. *Whether the plaintiff entitled to specific performance of agreement to sell of one house as prayed? OPP*
3. *Whether the plaintiff entitled to alternative relief of recovery as prayed for? OPP*
4. *Whether the suit is not maintainable? OPD*
5. *Whether the plaintiff has not come to Court with clean hands? OPD*
6. *Whether the plaintiff has no locus standi to file present suit? OPD*
7. *Whether the plaintiff is estopped by own act and conduct from filing the present suit? OPD*

Additional issues framed on 10.09.2014.

- 7-A *Whether the suit filed by the plaintiff is time barred? OPD*
8. *Relief.*

There was no rebuttal evidence, therefore, the plaintiffs could not be permitted to lead evidence in rebuttal. The piece of evidence which they could led by leading evidence is in affirmative, thus, urges this Court for setting aside the impugned order, under challenge.

Learned counsel for the respondents-plaintiffs submitted that when the suit was listed for defendants' evidence, on an application moved by the plaintiffs, the trial Court had recasted and re-framed the following additional issues i.e. Issue Nos.7B & 7C:-

7-B *Whether the agreement dated 27.05.2003 is a product of fraud, forgery and concealment, if so, its effect/ OPD*

7-C *Whether Pritam Singh during his life time has never received an amount of ₹ 80,000/- on 27.5.2003, ₹ 30,000/- on 23.8.2003, ₹ 25,000/- on 28.1.2004 and ₹ 70,000/- vide receipt dated 16.7.2004, if so, its effect? OPD*

and the onus was placed upon the defendants, therefore, the plaintiffs cannot be prevented to lead evidence in rebuttal viz-a-viz the

aforementioned issues. The aforementioned order has been prevented from this Court as the revision petition is conspicuously silent about the same.

Mr. Bansal, in rebuttal submitted that the respondents-plaintiffs can though be permitted to lead evidence in rebuttal viz-a-viz issue Nos.7B & 7C, but cannot be permitted to lead evidence viz-a-viz the other issues, onus of which was on them, which could have led at the time, when their evidence is going on.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the impugned order dated 18.12.2014, which reads thus:-

"Order dated 18.12.2014

DW-5 Gushan Singh is present and cross-examined and thereafter learned counsel for the defendants No.3 and 4 vide his separate statement has closed evidence. Now to come on 6.1.2015 for rebuttal evidence, if any and for arguments."

On conjoint reading of the order and the issues as well as additional issues framed, I am of the view that the onus on issue No.7B and 7C is on the petitioners-defendants for which the respondents-plaintiffs cannot be prevented to lead evidence. Of course that evidence would be in terms of rebuttal evidence only and confined to only 7B & 7C, thus, the apprehension expressed in the present revision petition, much less, during the course of arguments is wholly misplaced and untenable.

For the foregoing reasons, I do not find any illegality and perversity in the impugned order, much less, no ground is made out for interference. While upholding the impugned order, the present revision

petition stands disposed of, in the aforementioned terms.

20.03.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No