

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

**CR No.3429 of 2015(O&M)
Date of Decision: 28.08.2018**

Ajmer Singh Dhillon

..... Petitioner

Versus

Rama Rani and another

.....Respondents

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

Present:Mr. G.S. Punia, Senior Advocate with
Ms. Jagriti Kalia, Advocate
for the petitioner.

Mr. Sanjeev Kumar Aggarwal, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 27.01.2015 passed by Additional District Judge, Panchkula in Civil Appeal No.80 of 2011/Case No.2111 of 2013 dated 23.05.2011 whereby respondent No.1 was allowed to lead evidence in rebuttal to the additional evidence led by the petitioner.

[2]. Brief facts of the case are that the suit filed by the plaintiff/petitioner for specific performance of agreement to sell dated 01.07.1997 was decreed by the Additional Civil Judge

(Senior Division), Panchkula vide judgment and decree dated 31.03.2011. Operative part of the relief clause reads as under:-

“32. As a sequel to my finding on aforesaid issues, especially on issue Nos.1 to 4, the suit of the plaintiff succeeds and is hereby decreed with costs. Resultantly, a decree of possession of the house No.340, Sector 17, Panchkula by way of specific performance of agreement to sell dated 01.07.1997 on making balance sale consideration, is hereby passed and counter claim of the defendant No.2 is hereby dismissed. The defendant No.1 is directed to execute the registered sale deed within 3 months from today. Decree sheet be drawn accordingly. File be consigned to record room.”

[3]. During pendency of the aforesaid suit, the suit land was sold by the judgment debtor in favour of respondent No.2. Prayer for impleadment of respondent No.2 as party defendant in the suit was dismissed vide order dated 14.02.2011 passed by Additional Civil Judge (Senior Division), Panchkula. Civil Revision No.1208 of 2011 was filed in the High Court, which was allowed vide order dated 21.02.2011. Petitioner was allowed to be impleaded as defendant being assignee by way of sale deed. It was observed that petitioner being the assignee has to watch his interest in the property particularly when the rights of the parties have not yet been settled between the plaintiff and the assignor. No prejudice would be caused to the

plaintiff, if the assignee is allowed to be substituted in place of vendors. It was also observed that respondent No.2 has undertaken not to file any written statement, claim any further issues and would not lead any evidence, however, he would only defend his case on the basis of evidence already on the record. The suit was decreed on 31.03.2011.

[4]. Thereafter, first appeal was filed by respondent No.2 before the Lower Appellate Court. An application was filed by the plaintiff/decreed holder before the Lower Appellate Court for adducing judgments of acquittal passed by the criminal Courts.

[5]. The application was allowed by the Additional District Judge, Panchkula on 22.05.2014 on the basis of no objection raised by learned counsel for the appellant before the Lower Appellate Court that plaintiff/decreed holder (respondent No.2 herein) was allowed to tender the documents in the evidence subject to payment of costs of Rs.500/-. The case was adjourned to 10.07.2014 for tendering of judgments of acquittal passed by the criminal Courts on behalf of the plaintiff/decreed holder as well as documents, if any, on behalf of the appellant. In respect of permission granted to respondent No.2 to tender documents, if any, on behalf of the appellant before the Lower Appellate Court, respondent No.2 filed an application to summon the witnesses in rebuttal to the additional evidence

allowed in favour of the plaintiff/deGREE holder.

[6]. Learned counsel for the petitioner submitted that the scope of application for rebuttal to the additional evidence led by the petitioner/plaintiff/deGREE holder was only to counter the judgments of acquittal passed by the criminal Courts. The scope of rebuttal cannot go beyond the scope of countering the judgments of acquittal passed by the criminal Courts. Respondent No.2 cannot be allowed to lead any rebuttal evidence so as to add foreign plea in the main *lis*, particularly when at the time of allowing impleadment of respondent No.2, he had undertaken not to file any written statement, claim any further issues and would not lead any evidence except to defend the case on the basis of evidence already on the record.

[7]. On the other hand, learned counsel for the respondents submitted that by way of leading rebuttal to the additional evidence, the respondents sought to prove the report of Satish Kumar Sharma, Assistant FRRO/HQ, Daily Airport to show that the petitioner was not present at the relevant time when the attorneys were executed.

[8]. Evidently, the additional evidence which was allowed in favour of the plaintiff/deGREE holder was only to tender the judgments of acquittal passed by the criminal Courts and the application filed by respondent No.2 (appellant before the Lower

Appellate Court) to counter the aforesaid prayer could not be extended to allow leading of foreign plea on the record. The application filed by respondent No.2 for adducing witnesses in rebuttal to the additional evidence of the plaintiff/deGREE holder was allowed by the Lower Appellate Court vide the impugned order dated 27.01.2015.

[9]. At one point of time, learned counsel for the petitioner even sought to withdraw the application for additional evidence filed before the Lower Appellate Court which was allowed vide order order dated 22.05.2014. It was noticed in the order dated 08.02.2016 passed by the Co-ordinate Bench that the petitioner shall be willing to withdraw the application filed before the Appellate Court. It only means that needless time is not lost allowing for rebuttal evidence to the petitioner. Notice was issued to the counsel appearing on behalf of the respondents before the Lower Appellate Court.

[10]. Even during course of arguments before this Court, the petitioner showed his inclination to withdraw the application under Order 41 Rule 27 CPC for leading additional evidence which was allowed on 22.05.2014 and the evidence so led by the petitioner may not be read in evidence while deciding the first appeal on merits by the Lower Appellate Court.

[11]. At this stage, this Court is not in a position to decide the

/is on the basis of assertion and denial of the parties. Learned counsel for the petitioner has made a categorical statement before this Court that he will not press for additional evidence granted in favour of the petitioner vide order dated 22.05.2014 and the evidence so led on record be not read while deciding the first appeal pending before the Lower Appellate Court. The evidence so led on record be directed to be eschewed by the Appellate Court. Even if the de-exhibition of documents is not accepted for want of any provision in CPC, still the permission granted in favour of respondent No.1 for leading evidence in rebuttal to the additional evidence, in my considered opinion, has gone beyond the scope of right available to the respondent No.1. In any case, since the petitioner is willing to seek nullification of the effect of Order dated 22.05.2014 passed by the Additional District Judge, Panchkula by withdrawing the application under Order 41 Rule 27 CPC, therefore, the resultant effect of such prayer would be to eschew the additional evidence so led by the petitioner and not to allow any evidence to be led by the respondents in rebuttal to such additional evidence. Situation as prevailing on the date of filing of the first appeal before the Lower Appellate Court is directed to be restored and the Lower Appellate Court shall decide the appeal on merits without being influenced by any additional evidence led by the petitioner/plaintiff/decreed holder as the same is liable

to be eschewed.

[12]. This revision petition is disposed of accordingly.

August 28, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

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