

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

**CR No.3587 of 2017
Date of Decision: 01.06.2018**

**SatyavratPetitioner
Vs
Virender Singh and othersRespondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sudhanshu Makkar, Advocate
for the petitioner.

Mr. Manoj Kaushik, Advocate
for respondent No.1.

Mr. Sunny Namdev, Advocate
for respondents No.2 to 12.

RAJ MOHAN SINGH, J.(Oral)

[1]. As per office report, Respondents No.13 to 16 and 19 have not been served. Both the parties are ad idem that only respondent No.1 is the contesting respondent and service qua respondents No.13 to 16 and 19 may be dispensed with. Ordered accordingly.

[2]. Petitioner has assailed the order dated 03.04.2017 passed by the trial Court, whereby the application moved by the plaintiff/respondent for additional evidence was allowed.

[3]. Plaintiff filed a suit for declaration on the basis of registered adoption deed dated 22.07.1996. Plaintiff sought himself to be declared as adopted son of Rishal Singh son of

Kishana by virtue of aforesaid registered adoption deed. Vide order dated 26.02.2013, following issues were framed:-

- “1) Whether the plaintiff is entitled to decree for declaration as prayed for? OPP*
- 2) If issue No.1 is proved, whether the plaintiff is entitled for the consequential relief of permanent injunction? OPP*
- 3) Whether the plaintiff has no locus standi to file the present suit? OPD*
- 4) Whether suit is not maintainable in the present form? OPD*
- 5) Whether suit is not within limitation? OPD*
- 6) Whether plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court? OPD*
- 7) Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
- 8) Whether suit is collusive between plaintiff and defendants No.13 to 16?*
- 9) Relief.”*

[4]. Thereafter, plaintiff led evidence and concluded the same by closing the evidence in affirmative on 13.02.2015. Defendants have also concluded their evidence. Thereafter,

respondent filed an application for leading additional evidence and the same was rejected by the trial Court vide order dated 05.08.2016. Against the said order, CR No.5289 of 2016 was filed in the High Court which was rejected vide order dated 22.08.2016. Thereafter, the present application for leading additional evidence was filed on 31.08.2016. The prayer has been accepted vide impugned order 03.04.2017.

[5]. Learned counsel for the petitioner vehemently submitted that the plaintiff/respondent was allowed to lead evidence in rebuttal in respect of issue No.1, the onus of which was on the plaintiff/respondent. Once the prayer was rejected by the trial Court as well as in CR No.5289 of 2016 on 22.08.2016, plaintiff/respondent cannot be permitted to lead evidence in rebuttal by circumventing the earlier order. Plaintiff by way of additional evidence seeks to adduce independent evidence and not to counter the evidence led by the defendants, rather to affirm the evidence led by him in the affirmative evidence. Even though, the plaintiff has closed only affirmative evidence, but he can only be permitted to lead evidence to counter the evidence led by the defendants in the shape of rebuttal evidence. Even the prayer for leading evidence has already been declined by this Court in CR No.5289 of 2016.

[6]. In view of ratio laid down 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, the plaintiff cannot be permitted to lead evidence in rebuttal in respect of issue No.1, the onus of which was on the plaintiff himself.

[7]. Prayer was rightly rejected by this Court in CR No.5289 of 2016. Once the prayer for leading evidence in rebuttal was rejected by the High Court, plaintiff cannot be permitted to lead evidence on same cause of action. Reference can be made to ***Ram Kumar Vs. Raj Kumar and others, 2014(3) CivCC 453*** and ***M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal Vs. Ajmer Snigh and another, 2014(4) Law Herald, 3627.***

[8]. For the reasons recorded hereinabove, impugned order dated 03.04.2017 passed by the trial Court is set aside. Revision petition is accordingly allowed, dismissing the application for additional evidence.

June 01, 2018

Prince

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No