

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.384 of 2018 (O&M)
Date of Decision: November 28, 2018

Gurmej Singh

...Petitioner

Versus

Harbhajan Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Veneet Sharma, Advocate,
for the petitioner.

AMIT RAWAL, J.

The present civil revision at the instance of the petitioner-defendant is directed against the impugned order dated 09.01.2018 (Annexure P-7), whereby the application of the respondent-plaintiffs under Section 151 CPC for leading additional evidence in rebuttal in a suit for permanent injunction seeking restraint against the petitioner-defendant from interfering into peaceful possession of 2nd Floor of the house bearing No.3142/11 measuring 50 sq.yards, , has been allowed.

Mr. Veneet Sharma, learned counsel appearing on behalf of the petitioner-defendant submitted that the respondent-plaintiffs had concluded their evidence in affirmative in the suit referred to above. An agreement to sell regarding the sale of the property for a total sale consideration of ₹26.00 lacs alleged to have been scribed by a Deed Writer Deepak Sharma and Sai Dass Gulati being one of the attesting witnesses. The petitioner-defendant denied the execution of the agreement to sell and submitted that

the defendant had deposited ₹ 10.00 lacs odd amount in the loan account with the Amritsar Central Cooperative Bank Ltd., which was in the knowledge of the plaintiffs. The plaintiffs cannot be permitted to lead evidence in rebuttal in the absence of any rebuttal issue. All the aforementioned witnesses and proving of the signature through expert could have been led in affirmative. The trial court remained oblivious of the technicalities of law and, urged this court for setting-aside the impugned order.

Notice of motion in this case was issued on 19.01.2018, whereby operation of the impugned order was stayed.

As per office report dated 02.08.2018, all the respondents have been served but there is no representation on their behalf. Accordingly, I proceed to decide the revision petition on merits.

I have heard the learned counsel for the petitioner-defendant and appraised the paper book.

Respondent-plaintiffs wanted to examine the following witnesses by way of additional evidence:-

- “(i) Sai Dass Gulati son of Sh. Des Raj Gulati, resident of Gali Badaro, Khoo Bombay Wala, Amritsar;*
- (ii) Sh.Deepak Sharma, Deed Writer, District Courts, Tehsil Complex, Amritsar along with stamp vendor Register and deed writer register;*
- (iii) The Manager, Amritsar Central Cooperative Bank Ltd., Amritsar along with deposit voucher dated 21.4.2014 of deposit of Rs.1027368/- in loan account;*
- (iv) Handwriting Expert to compare the signature of defendant on agreement to sell with the sale deed which is admitted document.”*

It would be in the fitness of things to extract the issues framed

by the trial court, which read thus:-

- “1) Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for? OPP*
- 2) Whether the suit is not maintainable in the present form? OPD*
- 3) Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD*
- 4) Whether the plaintiffs have no locus standi to file the present suit? OPD*
- 5) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 6) Whether the plaintiffs have not come to the court with clean hands? OPD*
- 7) Relief.”*

From the perusal of the issues, it is evident that there is no rebuttal issue. The aforementioned piece of evidence could have been led by the plaintiffs in affirmative. Once the evidence has been closed without reserving right to lead rebuttal, under the garb of additional evidence, plaintiffs cannot be permitted to lead additional evidence in rebuttal. The aforementioned view of mine is derived from the ratio decidendi culled out by the Division Bench of this Court in **Avtar Singh and another Versus Baldev Singh and another**, 2015(1) PLR 230.

In my view, the trial court has committed illegality and perversity in allowing the application by imposing costs of ₹ 10,00/- which is not sustainable in the eyes of law. Resultantly, the impugned order is set-aside. Revision petition stands allowed.

November 28, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No