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

CR No. 4305 of 2014

Date of Decision: 26.07.2018

Dilbag Singh

....Petitioner

Vs

Jugal Kishor and others

.....Respondents

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

Present: Mr. R.S. Budhwar, Advocate,
for the petitioner.

Mr. Puneet Jindal, Sr. Advocate, with
Mr. Varun Goyal, Advocate,
for respondent No.1.

Mr. Ankur Malik, Advocate,
for respondent No.7.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioner has assailed the order dated 23.05.2014 passed by Civil Judge (Junior Division), Sonapat vide which application for leading expert evidence in rebuttal/additional evidence was declined.

2. Plaintiff-petitioner filed a suit for possession by way of specific performance of agreement to sell dated 17.09.1997. Defendant No.1 in his written statement has denied his signature on the aforesaid agreement to sell.

3. After completion of the pleadings, following issues

were framed:-

1. *Whether the defendant entered into an agreement to sell dated 17.9.97 in favour of the plaintiff of the land mentioned in para No.1 of the plaint at the rate of Rs.16,00,000/- and received Rs.15,00,000/- as earnest money? OPP.*
2. *If issue No.1 is proved, whether the plaintiff is entitled for decree for possession by way of specific performance? OPP.*
3. *If issue No.1 and 2, whether the plaintiff is entitled for a decree of permanent injunction, as prayed for? OPP.*
3. *Whether the plaintiff has been and is still ready and willing to perform their part of contract? OPP.*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
5. *Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.*
5. *Whether the suit of plaintiff is bad for non joinder and mis joinder of necessary parties? OPD.*
6. *Whether the suit of plaintiff is barred by limitation? OPD.*

7. *Relief.”*

4. Perusal of issue No.1 would show that onus of the issue was on the plaintiff to prove execution of agreement to sell dated 17.09.1997, that was more so in view of stand taken by defendant No.1 in the written statement. Plaintiff did not lead any evidence in affirmative so as to tally signatures of defendant No.1 appearing on the aforesaid agreement to sell. Even the application filed at one point of time was withdrawn by him. Thereafter, plaintiff concluded his evidence. Defendants also concluded their evidence.

5. At the stage of rebuttal, plaintiff has moved an application for leading expert evidence in rebuttal so as to match signature of defendant No.1 on agreement to sell dated 17.09.1997.

6. It is a settled principle of law that the plaintiff cannot lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff. Evidently, plaintiff has closed his evidence without reserving any right to lead evidence in rebuttal nor any rebuttal issue was framed.

7. In view of law laid down in **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) P&H 537 (DB); Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794 (DB)** and **Avtar Singh vs. Baldev Singh, 2015(1) PLR 230 (DB)**, the plaintiff cannot be

allowed to lead evidence in rebuttal in respect of issue like the one which was framed as issue No.1 of which onus was squarely on the plaintiff.

8. In view of ratio laid down in **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal vs. Ajmer Singh and another, 2014(4) Law Herald 3627,** the plaintiff cannot lead additional evidence when the evidence was well within his knowledge in view of the stand taken by defendant No.1 in his written statement. Even specific application was filed for the said purpose, that was withdrawn.

9. At this stage, learned counsel for the petitioner has tried to explain that infact filing of second application was for comparison of signature of defendant No.1 on the agreement to sell as well as on the sale deeds which were subsequently executed by defendant No.1. Even if the application was filed for the relief claimed, still requirement vis-a-vis issue No.1 remained the same.

10. No indulgence can be granted to the petitioner.

11. This revision petition is accordingly, dismissed.

26.07.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No