

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

**CR No.4640 of 2015 (O&M)
Date of decision : May 21, 2018**

Mithlesh Chaudhary

..... Petitioner

Versus

Surajbhan and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amit Jain, Advocate for the petitioner.

Mr. Sanjay Mittal, Advocate for respondent Nos.1 to 7.

Mr. C.R. Olla, Advocate for respondent No.8.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 28.05.2015 (Annexure P-5) passed by the learned Civil Judge (Sr. Divn.), Hisar, vide which the application filed by the plaintiff to summon the concerned official of Sub Registrar, Hisar along with computer date containing time of registration of sale deed No.5726 to 5731, dated 08.07.2011 and concerned official, Deputy Commissioner Office, Hisar along with complete names and addresses and registers submitted by them after completing entries, was dismissed.

It was stated in the application that the plaintiff wants to lead rebutal evidence on issue Nos.4 and 5 and for which the said record is required.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the issues goes to show that the plaintiff had filed a suit for declaration that he is owner in possession of the property mentioned in the plaint. He also challenged certain sale deeds. Issue Nos.1 and 2 were framed on these points. Rebuttal is sought to be led on issue Nos.4 and 5, which are issues regarding cause of action and locus standi on the plaintiff and whether the plaintiff is stopped from filing the present suit by his own act and conduct? These issues are purely legal in nature, for which no amount of evidence is required.

Learned counsel for the petitioner has relied upon the Division Bench judgment of this Court delivered in case of ***“Avtar Singh and another vs Baldev Singh and others”***, 2015(1) PLR 230.

A perusal of the said authority shows that in the said case, the provision of Order XVIII, Rule 3 CPC, 1908 was considered, which is reproduced as under:

“3. Evidence where several issues – Where there are several issues, the burden of proving some of which lies on the party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.”

A perusal of said provision shows that the plaintiff is allowed to lead evidence in rebuttal, only if the burden of proving of some issues is upon the defendant and defendant lead evidence on such point and the plaintiff has reserved his right to lead rebuttal evidence.

In the present case, the evidence sought to be summoned above is in support of issue Nos.1 and 2, for which the plaintiff had already led the affirmative evidence.

The mere fact that burden of proving some of the issues, which are legal in nature, was upon the defendant, is no ground to allow the plaintiff to lead rebuttal evidence to support the evidence on some of the issues, the burden of which was upon the plaintiff and on which he has already led the affirmative evidence. If this is allowed, it will start unending process of leading evidence by the defendant, then rebuttal and then reply by the defendant and so on.

It being so, the trial Court has rightly dismissed the application to summon the said witness. There is no force in the present revision petition. As such, the same is dismissed.

(KULDIP SINGH)
JUDGE

May 21, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No