

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

**CR No.7328 of 2017
Date of Decision: 17.07.2018**

Mandeep Bansal

.....Petitioner

Vs

Jatinder Pal Singh Walia and another

.....Respondents

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

Present: Mr. M.S. Jandiala, Advocate
for the petitioner.

Mr. Harinder Pal Singh Ishar, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the order dated 04.08.2017 passed by Civil Judge (Junior Division), Chandigarh, whereby application filed by the plaintiff/respondent No.1 for leading evidence in rebuttal was allowed.

[2]. Plaintiff/respondent No.1 filed a suit for recovery of Rs.1,50,000/- along with interest @ 12 % per annum with

recovery of damages on the basis of receipt dated 01.03.2012 witnessed by one Dr. Ajit Singh son of Kashmira Singh. Plaintiff alleged that he had retired from defence services. Defendants were having cordial relations with him. Defendant No.2 is grandfather of defendant No.1. In the year 2012, defendants induced the plaintiff to purchase House No.4418, Ward No.13, Janta Chowk, Kharar as they were in need of money. On their inducement, the plaintiff agreed to purchase the said house and the amount was settled as Rs.25 lacs vide agreement to sell dated 01.03.2012 executed between the parties. Defendants received an amount of Rs.7 lacs towards earnest money. At the time of agreement, defendants conveyed to the plaintiff that the house was free from all incumbrances and was measuring 212 sq. yards. Plaintiff could not get the exact measurement of the said house at that time, but later on, he came to know that the said house was only 112 sq. yards. Receipt qua payment made to the defendants was endorsed at the back of first page of the agreement to sell. After execution of said agreement, defendant No.1 again contacted the plaintiff and requested him for paying Rs.1,50,000/- for his personal need. Defendant No.1 told the plaintiff that the amount will be adjusted in the total sale consideration. Defendant No.1 called defendant No.2 on the mobile and defendant No.2 gave his consent to the plaintiff. Both the parties agreed that the money will be adjusted in the

balance sale consideration. Thereafter, the plaintiff agreed to give Rs.1,50,000/- to defendant No.1. An amount of Rs.1,40,000/- was given to defendant No.1 by cheque No.492330 dated 01.03.2012 of Punjab National Bank, Branch Burial and an amount of Rs.10,000/- was given to defendant No.1 in cash. Defendant No.1 encashed the said cheque on the same day after signing the same at the back of the said cheque and hence received amount of Rs.1,50,000/- in total from the plaintiff. He also issued a receipt dated 01.03.2012 to the plaintiff. The date of registration of sale deed was fixed as 15.06.2012 as per agreement to sell dated 01.03.2012.

[3]. Plaintiff further alleged that he went to the office of Sub Registrar, Kharar on the date fixed i.e. 15.06.2012 along with balance sale consideration, but defendant No.2 was not present for registration of sale deed. Plaintiff got his presence marked by way of affidavit dated 15.06.2012 and thereafter, made efforts for honouring the agreement to sell. Thereafter, plaintiff came to know that defendant No.2 was not the absolute owner of the said house and he cheated the plaintiff by mentioning the wrong facts in the agreement to sell. Defendants told the plaintiff to give Rs.18 lacs towards balance sale consideration and then plaintiff asked the defendants to adjust Rs.1,50,000/- which was received by defendant No.1 on 01.03.2012 and also told them

about the incorrect measurement and ownership of the house in question. Defendant No.1 refused to adjust Rs.1,50,000/- and also refused to give the said amount to the plaintiff. Receipt dated 01.03.2012 was allegedly executed by defendant No.1 in a sum of Rs.1,50,000/- endorsing the receipt of cheque in a sum of Rs.1,40,000/- and cash amount of Rs.10,000/- from the plaintiff.

[4]. Vide order dated 03.11.2014, following issues were framed:-

“1. Whether the plaintiff is entitled to recovery of Rs.1,50,000/- along with interest as alleged? OPP

2. Whether the present suit is not maintainable? OPD

3. Whether the plaintiff has not approached this Court with clean hands, if so, its effect? OPD

4. Whether the present suit is bad for mis-joinder and non-joinder of parties? OPD

5. Whether the present suit is bad for the purpose of Court fees and jurisdiction? OPD

6. Relief.”

[5]. Perusal of the aforesaid issues would show that issue No.1 was framed in the context of entitlement of the plaintiff for recovery of Rs.1,50,000/- along with interest and the onus to

prove the same was on the plaintiff himself. While appearing as PW 1, plaintiff submitted that defendant No.2 is grandfather of defendant No.1 and reiterated the stand taken in the plaint in his examination-in-chief dated 29.04.2015. After his cross examination on 09.12.2015, 16.02.2016 and 01.03.2016, the evidence of the plaintiff was closed in affirmative.

[6]. Defendants also led their evidence and thereafter, plaintiff filed an application for leading evidence in rebuttal on the ground that during course of evidence of the defendants, they have refused execution of receipt and therefore, plaintiff wanted to examine Dr. Ajit Singh, Chaman Lal Chauhan, Notary Public, Jagmohan Singh and to place on record the certified copy of summoning order passed by Judicial Magistrate, First Class, Chandigarh in criminal case titled Jatinder Pal Singh Walia Vs. Kirpal Singh.

[7]. The application was contested by the defendants on the ground that the case was adjourned on number of occasions for evidence of the plaintiff and ultimately, plaintiff closed his evidence in affirmative. In the cross examination of the plaintiff on 09.12.2015, he has admitted that the witness of receipt can come to depose in the Court and the receipt was issued at his residence when he came to his house. The witness of the receipt dated 01.03.2012 was also present at his residence.

Defendants also contested the application on the ground that the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself.

[8]. The application was allowed by the trial Court vide the impugned order even after observing the fact that the defendants have denied the execution of application as well as receipt in their evidence.

[9]. I have heard learned counsel for the parties.

[10]. Learned counsel for the petitioner vehemently submitted that in para No.3 of the written statement on merits, defendants have denied the execution of receipt dated 01.03.2012 and claimed that the same was forged and fabricated. Plaintiff failed to produce the said receipt before the police during investigation. Defendants also submitted that plaintiff has really concocted a false story and created a documentary proof of the cheque of Rs.1,40,000/- which was a self cheque and defendant No.1 in the routine course of business, withdrew the amount on 01.03.2012 and the same was handed over to the plaintiff.

[11]. Learned counsel relied upon the opinion of expert witness Dr. Jassy Anand (DW2) and report DW 2/1 to show that

signatures appearing on the receipt were forged. Learned counsel further relied upon **Surjit Singh and others Vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537, Jagdev Singh Vs. Darshan Singh, 2007(2) CCC 261** and **Avtar Singh and another Vs. Baldev Singh and others, 2015(1) CCC 728 (DB)** and submitted that the plaintiff cannot be permitted to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff. Plaintiff was to reserve his right and was also required to exercise his option when he closed his evidence in affirmative. In case of non-reservation of such right, the plaintiff cannot lead any evidence in rebuttal. Learned counsel also relied upon **Tejinder Kaur Vs. Kishan Singh, 2008(1) CCC 813** and contended that reservation of right was last stage of exercising option to reserve the right of rebuttal and the same could be before other party begins its evidence.

[12]. On the other hand, learned counsel for respondent No.1 very vehemently submitted that defendants themselves have stated in para No.2 of the written statement on merits that in the month of January 2012, defendant No.1 due to his financial needs, approached the plaintiff for getting a loan against his house. Due to mutual understanding and under the guidance of the plaintiff, some of the papers were prepared for getting the loan assistance from the bank. The said ante dated

agreement to sell was without any consideration and defendants prepared all the documents and acted as per the directions given by the plaintiff to obtain the loan. By relying upon the aforesaid recital in the written statement, learned counsel submitted that the preparation of all the documents was for obtaining loan and not for any alleged receipt.

[13]. Perusal of the issues framed vide order dated 03.11.2014 was suggestive of the fact that onus of issue No.1 was on the plaintiff himself. Expert opinion given by the witness in respect of forged signature appearing on the receipt could be questioned by way of cross examination of the witness. The nature of rebuttal evidence as prayed by the plaintiff in no way would lead to any plausible counter to the evidence of the defendants, particularly when no such right was reserved by the plaintiff to lead evidence in rebuttal in respect of issue No.1. Plaintiff never sought for re-casting of the issues.

[14]. Having considered the controversy in the aforesaid factual premise, I am of the view that the trial Court has exceeded its jurisdiction in allowing the application for leading evidence in rebuttal filed by the plaintiff.

[15]. In view of observations made hereinabove, this revision petition is allowed. Impugned order dated 04.08.2017 passed by Civil Judge (Junior Division), Chandigarh is set aside and

trial Court is directed to proceed in accordance with law.

July 17, 2018.
Prince

(RAJ MOHAN SINGH)
JUDGE

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