

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.814 of 2016

Date of Decision.26.04.2018

Seema

.....Petitioner

Vs

Harbir Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Varinder Rana, Advocate
for respondent No.1.

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AMIT RAWAL J.(ORAL)

The petitioner-defendant is aggrieved of the impugned order whereby the respondent-plaintiff has been granted permission to lead evidence in rebuttal in suit seeking specific performance of agreement to sell dated 02.12.2011 by challenging the sale deed executed by defendant No.1 in favour of defendant No.2 and further by defendant No.2 in favour of defendant No.3.

Mr. Ashish Gupta, learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff by leading evidence in affirmative brought on record evidence in terms of pleadings, however, at the stage of defendant's evidence, the petitioner-defendant summoned stamp vendor from whom the alleged stamp paper for agreement to sell in question were purchased but the same was given up. It is in that background, respondent-plaintiff moved application for examining of the expert which is not permissible in the absence of any rebuttal issue. Therefore, the impugned order is not sustainable in the eyes of law.

the respondent-plaintiff submitted that since the aforementioned witness was permitted to be summoned but when the defendant refused to examine, necessity arose to the plaintiff to get the truth ascertained by bringing on record the register as it would have supported the case of the plaintiff, therefore, the order under challenge cannot be said to be without jurisdiction or illegal, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gupta, for, there is no rebuttal issue which would have caused to the respondent-plaintiff to examine the stamp vendor in rebuttal. At the best, the respondent-plaintiff could have taken the adverse inference at an appropriate stage. It is settled law that a party without reserving right or under the garb of additional evidence cannot be permitted to lead evidence in rebuttal unless and until special, contingent or subsequent event has arisen.

All these factors have not been taken care by the Court below, therefore, the order under challenge is fallacious and not sustainable in the eyes of law. The impugned order is set aside and the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 26, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No