

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

CR No.7937 of 2018

Date of Decision : 14.12.2018.

Rubdeep Singh

...Petitioner

Versus

Nachhattar Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Munish Raj Chaudhary, Advocate for the petitioner.
Mr. B.S. Sidhu, Advocate for respondent Nos.2 to 5.
Mr. B.S. Mital, Advocate for respondent Nos.7 and 8.
None for respondent Nos.1 and 6.

B.S.WALIA, J. (Oral)

1. Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 23.10.2018 (Annexure P-2), passed by the learned Civil Judge (Junior Division), Malout, dismissing the application (Annexure P-1) filed by the petitioner-plaintiff for leading additional evidence.

2. Brief facts of the case leading to the filing of the revision petition are that the petitioner-plaintiff had filed a suit seeking a declaration that he was owner of land as fully detailed in head note of the plaint and that sale deed No.5 dated 05.04.2010, sale deed No.3753 dated 10.03.2010, sale deed No.222 dated 27.04.2010 executed by respondent/defendant No.1 in favour of respondent/defendant Nos.2 and 3 as also sale deed No.1327 dated 17.06.2004 executed by respondent/defendant No.1 in favour of respondent/defendant Nos.4 to 6 and mutation No.3182, 3188 and 2924 sanctioned on the basis of the

aforementioned sale deeds qua the suit property were illegal, null and void.

3. On the basis of the pleadings of the parties, ten issues were framed by the learned trial Court, out of which, relevant issue Nos.1 and 2 are reproduced as under:-

Issue No.1- Whether the plaintiff is entitled to the relief of declaration as mentioned in the head note of the plaint as prayed for? OPP

Issue No.2- Whether the plaintiff is entitled to the relief of possession as mentioned in the head note of the plaint as prayed for? OPP

4. Onus to prove issue Nos.1 and 2 was on the petitioner-plaintiff. Thus, it was for the petitioner-plaintiff to place on record the documents on which he was relying upon besides he was also required to lead evidence in respect thereto and to prove the sale deeds as per his stand. However, the petitioner-plaintiff did not place sale deed No.222 dated 27.05.2010 as well as sale deed No.1327 dated 17.06.2004 on record. It was only after the respondents-defendants had led evidence and the case was at the stage of rebuttal evidence that the petitioner-plaintiff moved an application for production of sale deed bearing vasika No.2222 dated 27.04.2010 (wrongly reflected as 05.04.2010 in the application), sale deed No.1378 dated 17.04.2004 as well as jamabandi of the suit property for the year 2012-13 and 2017-18, mutation No.3178 besides school certificate in respect of date of birth of the petitioner-plaintiff by way of additional evidence.

5. It needs noticing here that mutation No.3178 which was sought to be produced on record along with other documents by way of an application for additional evidence had not been challenged in the aforesaid civil suit filed by the petitioner-plaintiff. Besides at the time of issuance of notice of motion, learned counsel had relied upon the decision of a Coordinate Bench of this Court in Sukhwinder Kaur vs. Hardev Kaur and others 2018 (4) Law Herald (P&H) 2917, to contend that the impugned order had been passed without taking into account the fact that the petitioner could not be penalized due to the mistake of the counsel and in the circumstances, one opportunity ought to have been granted, subject to payment of costs. Learned counsel contends that in the circumstances one opportunity be granted to the petitioner-plaintiff to lead evidence in respect of the documents sought to be produced by way of additional evidence on such terms as to costs as deemed appropriate failing which grave prejudice would be caused to the petitioner.

6. Per contra, learned counsel for the respondents has referred to paragraph No.10 of the revision petition, to contend that the petitioner-plaintiff has not challenged the impugned order dated 23.10.2018 on merits but only on the ground that proper opportunity was not granted to the petitioner to adduce evidence. Leaned counsel states that the same is factually incorrect since the petitioner had availed as many as eleven effective opportunities for leading evidence and if he had failed to place on record the documents which were later on sought to be produced on record by way of additional evidence and

to lead evidence in respect thereto, no body except the petitioner-plaintiff himself was responsible for the same.

7. Learned counsel further contends that once the civil suit had been filed challenging the sale deeds while contending that the petitioner-plaintiff had attained majority only at the time of filing of the suit then it was incumbent upon the petitioner-plaintiff to have placed all the sale deeds as well as connected documents in respect thereto including the school certificate on record and to have led evidence in respect thereto and it was not open to the petitioner-plaintiff to move an application by way of additional evidence at the rebuttal stage especially since he had closed his evidence in affirmative. Learned counsel further states that it was not the case of the petitioner-plaintiff that the respondents-defendants had brought some new facts in their evidence on the basis of which the petitioner-plaintiff could be given the right to rebut the evidence of the respondents-defendants. Learned counsel submits that in fact all the four sale deeds as well as the jamabandis including school certificate were very much available with the petitioner-plaintiff at the time of filing of the civil suit and that in the circumstances it was not open to the petitioner-plaintiff to prove the aforementioned documents in rebuttal evidence despite admission of execution of the sale deeds. In fact the plea of the petitioner at the time of issuance of notice of motion was different then the plea as set up in the application. While at the stage of issuance of notice of motion one opportunity was sought on account of mistake of counsel in not producing the relevant documents, a perusal of application (Annexure P-1) at page No.13 paragraph No.4 reveals that it was claimed that the

documents sought to be produced could not be produced as they were in large number.

8. I have heard the submissions of learned counsel for the parties.

7. There is a difference between a prayer for leading additional evidence and for leading evidence in rebuttal in as much as while additional evidence is in respect of a fact which was not to the knowledge or was not known to the party seeking to lead additional evidence despite due diligence, rebuttal evidence is with respect to an issue which was already within the knowledge of the party and the party had reserved its right to lead evidence in rebuttal as has been held by this Court in M/s Satyam Steel vs. Smt. Sarla and another 2017 (1) RCR (Civil) 902. The Division Bench of this Court in Jagdev Singh and others vs. Darshan Singh and others 2007 (1) RCR (Civil) 794, lays down that a party cannot as a matter of right lead evidence in rebuttal on issues, the onus of proof of which was on it. In the instant case, the onus of proof of issue Nos.1 and 2 in respect of which application for leading additional evidence has been moved was on the petitioner-plaintiff. Thus, in view of the law laid down by Hon'ble the Division Bench of this Court in Jagdev Singh's case (supra), it is not open to the petitioner-plaintiff to lead additional evidence at the rebuttal stage qua issues the onus of proof of which was on him.

8. Accordingly, finding no merit in the revision petition, the same is dismissed.

(B.S.WALIA)
JUDGE

14.12.2018

rajesh.k.khurana

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