

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

C.R.No.8684 of 2016

Hardip Singh Nagra

....Petitioner

Versus

Bahadur Singh and Anr.

....Respondent

Date of Order: 23.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Deol, Advocate for the petitioner.

Mr. Harsh Bungar, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

Present revision is directed against the impugned order dated 05.12.2016 passed by learned Civil Judge (Sr. Division), Jalandhar whereby an application filed by the petitioner-plaintiff to lead evidence in rebuttal has been dismissed.

It is stated that the petitioner-plaintiff instituted the suit for permanent injunction against the respondent. Since the parties were at variance, the trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to relief of decree of permanent injunction as prayed for?OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form?OPD*
- 3. Whether the plaintiff has not come to the court with clean hands and suppressed material facts?OPD*
- 4. Whether the suit of the plaintiff is without any cause of action?OPD*
- 5. Whether the plaintiff is stopped on the principles of estoppels to file the suit?OPD*
- 6. Relief.”*

Though there was no dispute but the defendant admitted in

cross examination that a right had been vested in some third party (own brother) and in these circumstances, cause of action arose for the petitioner to lead evidence in rebuttal but the application filed by the petitioner in this respect has been dismissed vide the impugned order.

Learned counsel for the petitioner submitted that no harm and prejudice would be caused to the respondent-defendant, in case the petitioner is allowed to lead rebuttal evidence as the defendant will also have an opportunity to cross examine the said witness.

On the other hand, learned counsel for the respondent submitted that in the absence of any right having been reserved for leading evidence in rebuttal, the plaintiff-petitioner cannot be permitted to lead evidence in rebuttal. The application was totally misconceived being not maintainable. He thus prayed for dismissal of the petition.

After hearing learned counsel for the parties and appraising the paper book, I find no force and merit in the submissions of learned counsel for the petitioner. On perusal of the issues framed by the trial Court, it is clear that there was no rebuttal issue and in case during cross examination, if something had surfaced regarding title, it would not give cause of action to lead evidence in rebuttal in the absence of rebuttal issue.

Even while closing the evidence, the plaintiff had not reserved right to rebuttal evidence as there no occasion.

From the aforesaid discussion, I am not inclined to interfere with the impugned order, which cannot be said to be suffering from perversity.

Dismissed.

May 23, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No