

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

CR-910-2018 (O&M)

Date of decision : 22.5.2018

Om Parkash Sharma

..... Petitioner

Versus

Ved Parkash Sharma

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Neeraj Sharma, Advocate for the petitioner.

Mr. M.S. Dhami, Advocate for the respondent.

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 2.2.2018, (Annexure P-1) passed by learned Civil Judge (Junior Division), Chandigarh vide which an application filed by the plaintiff to lead rebuttal evidence was declined.

Heard.

A perusal of the file shows that plaintiff has filed a suit for possession of Booth No. 71-Shaheed Bhagat Singh Market, Sector 22-D, Chandigarh.

In the written statement, defendant, who happens to be the real brother of the plaintiff, made a counter claim and sought the specific performance on the sale transaction in terms of the agreement to sell dated 29.5.2001; GPA dated 29.5.2001, Will dated 2.6.2008 and affidavit

dated 8.7.2008 executed in favour of defendant regarding Booth No. 71, Shaheed Bhagat Singh Market, Sector 22-D, Chandigarh. He also sought declaration that by virtue of sale transaction mentioned above, defendant has become de facto owner of allotment rights of Booth No. 71, Shaheed Bhagat Singh Market, Sector 22-D, Chandigarh. Mandatory injunction was also sought against plaintiff for directing him to complete necessary formalities with Estate Officer, Chandigarh for transfer of Booth No. 71, Shaheed Bhagat Singh Market, Sector 22-D, Chandigarh. Permanent injunction and restoration of possession of Booth No. 71, Shaheed Bhagat Singh Market, Sector -22 Chandigarh was also sought which was allegedly taken by plaintiff in pursuance to ex-parte judgment and decree dated 5.1.2015. From the pleadings trial Court framed the following issues: -

1. Whether plaintiff is entitled for suit for possession as prayed for? OPD.
2. Whether the present suit is not maintainable? OPD.
3. Whether no cause of action arisen in favour of the plaintiff and against the defendant? OPD.
4. Whether the present suit is barred under the Court fee Act? OPD.
5. Whether the present suit is not properly verified as per law? OPD.

At the very outset, it is observed that issues framed in the present case are not proper and not in consonance with the pleadings. Plaintiff claimed possession on the basis of ownership regarding which no issue was framed. Defendant claimed specific performance of agreement and other documents. He also seeks declaration and mandatory injunction as well as permanent injunction. He also seeks restoration of possession for

which no issue was framed. Rather a negative issue was framed as to whether plaintiff is entitled to possession as prayed for and the burden of the same was put on defendant.

In the circumstances and in order to do complete justice with the parties, issues framed by the trial Court are set aside and the trial Court is directed to frame fresh issues in terms of the pleadings and if necessary allow parties to lead further evidence and thereafter decide as to whether the plaintiff is entitled to rebuttal of the issues, the burden of which is put on the defendant or not?

Disposed of.

(KULDIP SINGH)
JUDGE

22.5.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No