

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8506-2017 (O&M)

Date of decision : 27.4.2018

Lt. Col (Retd) Balbir Singh and others

..... Petitioners

Versus

Lt. Col. Jagmohan Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Manoj Pundhir, Advocate for the petitioners.

Mr. Puneet Bansal, Advocate for

Mr. Pankaj Jain, Advocate for respondent No. 1.

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 29.9.2017 passed by learned Civil Judge (Junior Division), SAS Nagar Mohali vide which the evidence led by plaintiff as PW-7 was ordered to be read in rebuttal evidence.

Heard.

It comes out that a suit for declaration and permanent injunction and rendition of accounts is pending before the learned trial Court in which following issues were framed: -

- “1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no locus standi? OPD

5. Relief.”

After the defendants led their evidence, plaintiff examined the official from Income Tax department in rebuttal. Thereafter, an application was moved under Section 151 of the Code of Civil Procedure, 1908 that the said evidence is to be read in the additional evidence. While disposing of the said application, the Court held that the said evidence has to be read in rebuttal.

Admittedly, in this case, the evidence of official of the Income Tax Department was led by the plaintiff in rebuttal after giving opportunity to lead evidence by the trial Court. The examination of issues shows that burden of proving the issues No. 1 and 2 was on the plaintiff and burden of proving the issues No. 3 and 4, which are legal and formal issues, was on the defendants. There was no issue on which rebuttal evidence could be led. The rebuttal evidence is to be led on the issues and not to rebut the evidence led by the opposite party. Therefore, learned trial Court erred in allowing the rebuttal evidence.

Accordingly, the impugned order dated 29.9.2017 passed by learned Civil Judge (Junior Division), SAS Nagar Mohali is set aside to the effect that the plaintiff is not entitled to lead rebuttal evidence. However, if the plaintiff desires, he can move a separate application for permission to lead additional evidence stating the grounds on which he is seeking additional evidence.

Revision is allowed accordingly.

(KULDIP SINGH)
JUDGE

27.4.2018
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Whether speaking / reasoned
Whether Reportable:

Yes
No