

111

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

CR No. 452 of 2019

Date of Decision: 05.02.2019

Kulwinder Singh Uppal @ Kalvinder Singh Uppal

-Petitioner

Vs

Om Parkash and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.S. Virk, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

This revision petition has been directed against the order dated 04.01.2019 passed by Civil Judge (Junior Division), Chandigarh whereby the application filed by the petitioner for leading additional evidence was rejected.

Perusal of the record would show that evidence of the plaintiff was closed by order of the Court.

Plaintiff wants to examine more witnesses on the ground that the witnesses were not readily available on their last known addresses. On that premise, they could not be produced at the relevant time.

Plaintiff seeks to examine attesting witnesses namely Rajesh Kumar Sharma and Ranjeet Gill on the ground that they

are material witnesses for just decision of the case.

An application came to be filed only when the case was partly heard by the trial Court. In all, plaintiff availed 45 effective opportunities to conclude his entire evidence. He could not examine the aforesaid witnesses in affirmative evidence despite number of opportunities.

It is a settled principle of law that the plaintiff cannot lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself. In a case of specific performance, execution of agreement to sell has to be proved by the plaintiff himself.

Plaintiff has not led evidence in affirmative of attesting witnesses of agreement to sell.

In view of law laid down in **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) P&H 537 (DB); Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794 (DB)** and **Avtar Singh vs. Baldev Singh, 2015(1) PLR 230 (DB)**, the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself by way of additional evidence.

Plaintiff seeks to by pass issue of rebuttal evidence. Even that relief can not be granted to the plaintiff.

Plaintiff has not assailed the order vide which his evidence was closed by order of the Court in any manner.

In view of above facts, no indulgence can be granted to the petitioner.

This revision petition is accordingly, dismissed.

05.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No