

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

CR No. 1907 of 2018

Date of Decision: 21.01.2020

Onkar Singh and others

.... Petitioners

Versus

Satpal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Gupta, Advocate
 for the petitioners.

 Mr. Madan Pal, Advocate
 for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioners have filed this revision petition against order passed by learned trial Court dated 15.03.2018 refusing to grant permission to the plaintiffs to lead evidence as a respondent in the counter claim filed by the defendants.

On 22.03.2018, following order was passed:-

“Inter alia contends that in a suit filed by the plaintiffs seeking declaration, defendants had filed counter claim and on the basis of pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled to decree for declaration to the effect that plaintiffs are owners in possession of the suit land detailed in para 2 of the plaint as well as in the sale deed dated 27.05.1988 as well as subsequent sale deeds situated in village Sheetalgarhi, District Karnal, as prayed for? OPP

2. Whether the plaintiffs are entitled to decree for permanent injunction restraining the defendants permanently from dispossessing and alienating the suit land forcibly and illegally, as prayed for? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

5. Whether the suit of the plaintiffs is hopelessly time barred? OPD

6. Whether the plaintiffs have concealed the true and material facts from this Hon'ble Court?OPD

7. Whether the counter claimant is entitled to decree for declaration to the effect that judgment and decree dated 28.09.1987, sale deed dated 27.05.1988 and mutation no.146 dated 27.12.2011, sale deed dated 27.05.1988, sale deed dated 12.07.1984 executed by Roop Chand, mutation no.148 sanctioned on 27.12.2011 on the basis of sale deed dated 12.07.1994, sale deed dated 13.06.1994, allegedly executed by Shri Ram, mutation no.149, sanctioned on 27.12.2011 on the basis of sale deed dated 13.06.1994, sale deed dated 16.06.1997 executed by Onkar, mutation no.147 dated 27.12.2011 on the basis of sale deed dated 16.06.1997 are null, void, ineffective and not binding on the counter claim as prayed for?OCC

8. Whether the counter claimant is entitled to decree for permanent injunction restraining the defendants from alienating the suit land in favour of any other person during the pendency of present suit and counter claim and also be restrained from interfering into the possession of counter claimants, as prayed for? OCC

9. Relief.”

The evidence of the defendants was closed on 14.03.2018. Since the Court below had not given any opportunity to the petitioner-defendants in counter claim to lead evidence, the application was filed which has erroneously been dismissed.

Notice of motion for 11.07.2018.

In the meanwhile, final order shall not be passed.

Liberty is granted to the petitioners to serve the respondents through the counsel representing them before the Court below.”

Learned counsel appearing for the defendant has submitted that the plaintiff can only be permitted to lead rebuttal evidence but no opportunity to lead evidence as a respondent in the counter claim.

This Court has considered submission. Counter claim is an independent suit for all intents and purposes. A separate reply is permitted to be filed to the counter claim filed by the defendant. Still further, even while framing issues, the learned trial Court has framed issues No. 7 and 8 while putting onus on the counter claimant. In these circumstances, learned trial Court was wrong in refusing permission to the plaintiffs, who are respondents in the counter claim, to lead their evidence in response to the evidence led by the counter claimants in affirmative.

Keeping in view the aforesaid facts, the order under challenge is set aside. Learned trial Court is requested to provide sufficient opportunity to the plaintiffs to lead evidence as defendants/respondents in the counter claim.

Petition allowed.

(ANIL KSHETARPAL)
JUDGE

21.01.2020
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	No