

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

CR-926-2021 (O&M)
Date of decision: 23.04.2021

HARBANS SINGH

...Petitioner

Versus

MALOOK SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. KS Kahlon, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The plaintiff (petitioner herein) has filed the revision petition under Article 227 of the Constitution of India assailing the correctness of the order passed by the Learned Trial Court while refusing to permit the petitioner to lead evidence in rebuttal.

Some facts are required to be noticed. The petitioner filed a suit for declaration to the effect that he alongwith defendant No.1 and 2, is owner in possession of the land measuring 2 kanals 13 marlas, referred to in the plaint. The plaintiff claims that he and defendant No.1 and 2 have inherited the property from their father late Sh. Shangara Singh who in turn had purchased the property vide sale deed dated 28.05.1990. After the framing of issues, the plaintiff led evidence and closed the same on 06.02.2018. While closing the evidence, he did not reserve his right to lead the evidence in rebuttal. Thereafter, the defendants led their evidence.

At that stage, the plaintiff wanted to lead rebuttal evidence.

Learned Trial Court has found that the evidence sought to be led by the

plaintiff is in the nature of affirmative evidence which cannot be permitted to led. It has further been found that since learned counsel for the plaintiff did not reserve the right to lead rebuttal evidence while closing his evidence on 06.02.2018, therefore, the plaintiff cannot be permitted to lead rebuttal evidence.

Heard learned counsel for the petitioner.

Learned counsel submits that the petitioner moved an application to summon the witness and the plaintiff was permitted to deposit the diet money. He, hence, submits that the Court cannot now refuse to record the deposition of the witness.

This Court has considered the submission, however, finds no substance therein for the following reasons:-

1. Learned counsel for the plaintiff while closing the evidence on 06.02.2018 did not reserve the right to lead rebuttal evidence. Hence, the plaintiff is not entitled to lead evidence.
2. The rebuttal evidence can be permitted to be led only with respect to the issue, the onus whereof was on the defendants. The plaintiff has failed to convince the Court that the evidence now sought to be led falls within the scope of rebuttal evidence.
3. Learned Trial Court has found that the plaintiff wants to lead affirmative evidence which cannot be permitted at this stage. Learned counsel for the petitioner has failed to

show that the aforesaid observation of the learned Trial Court is wrong.

The argument of the learned counsel, that the petitioner was permitted to deposit the diet money and therefore, now he cannot be denied permission, is without substance. The scope of rebuttal evidence is well defined. The plaintiff cannot be permitted to lead affirmative evidence at the stage of producing rebuttal evidence. Hence, no ground to interfere, in the exercise of jurisdiction under Article 227 of the Constitution of India, is made out.

Dismissed.

23.04.2021
ashok

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No