

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

CR-2901-2021(O&M)

Date of decision : 07.12.2021

Nityanand

... Petitioner(s)

Versus

Sube Singh and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. J.P. Sharma, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

Heard in physical mode.

Prayer in the present Civil Revision petition under Article 227 of the Constitution of India is for setting aside the impugned order dated 14.10.2021 (Annexure P-2) whereby the application for rebuttal evidence or in the alternate for additional evidence filed by plaintiff No.3/petitioner has been dismissed.

The brief facts relevant to the present *lis* are that plaintiff No.3/petitioner along with other plaintiffs filed a civil suit for declaration that they are owners in possession of their share recorded as co-sharer in the land Khewat No.32, Khatoni No.59 bearing Mustil and Killa No.182//10 (5-12) 11 (7-18) 183//3/2 (5-11) 4/2 (6-0) 5/1/2 (0-17) 6 (8-0) 7 (8-0) 8 (7-8) 14/2 (3-8) 15 (8-0) kitta 10 area 60 kanals 14 marlas as per jamabandi for the year 2002-03 situated at Tehsil and District Mahendergarh. The said suit

was dismissed by the Trial Court vide judgment and decree dated 20.02.2016. An appeal was preferred by the plaintiff No.3/petitioner, namely, Nityanand, along with other plaintiffs and the said appeal came to be decided on 07.01.2020 (Annexure P-3) along with another appeal. The concluding part of the said order reads as under:-

“3. In the considered opinion of this court there appears to be self-contradiction in judgment dated 20.2.2016, therefore, the impugned judgment and decree passed by the learned lower court is set aside and file is remanded back to the successor of the court of Ms. Jogindri, learned CJ (JD) Mohindergarh for deciding the same afresh. Parties are directed to appear before the concerned court on 17.1.2020. Lower court record along with copy of this order be also sent to the concerned court. The present file be consigned to record room after due compliance.”

The Lower Appellate Court finding self-contradiction in the judgment dated 20.02.2016 passed by the Trial Court, set aside the same and remanded the matter to the Trial Court for deciding afresh. After remand, plaintiff No.3/petitioner moved an application for permission to lead rebuttal evidence or in the alternate for leading additional evidence. The said application was dismissed by the Trial Court vide impugned order dated 14.10.2021 (Annexure P-2). Hence, the present civil revision petition challenging the said impugned order.

It has been contended by learned counsel for the petitioner that the application for rebuttal evidence or in the alternate for additional evidence ought to have been allowed inasmuch as the additional evidence sought to be led by plaintiff No.3/petitioner came to the knowledge of the plaintiff No.3/petitioner only post the case being remanded. Learned counsel for the plaintiff No.3/petitioner would contend that the said fact was not within the knowledge of plaintiff No.3/petitioner and, hence, could not be brought on record earlier. It has further been contended that since the matter has been remanded back, therefore, plaintiff No.3/petitioner had a right to move an application for rebuttal evidence/additional evidence.

In the present case, admittedly, the matter was remanded on a limited ground that there was a self-contradiction in the judgment of the Trial Court and the Trial Court was directed to decide the matter afresh. There was no direction for deciding the matter afresh by holding a *de novo* trial. Learned counsel for the plaintiff No.3/petitioner has very candidly admitted that in case the application for additional evidence/rebuttal evidence is allowed the same would amount to a *de novo* trial inasmuch as plaintiff No.3/petitioner would need to lead evidence in order to prove the documents. The order dated 07.01.2020 (Annexure P-3) passed by the Lower Appellate Court reveals that it was passed in the presence of the counsel and no request was made at that point of time before the Lower Appellate Court for permission to lead any fresh evidence. Further, a perusal of the application (Annexure P-2) reveals that no reasons whatsoever are forthcoming nor any dates are forthcoming as to when plaintiff No.3/petitioner came to know about the said evidence sought to be

produced. It has simply been stated in para 7 of the application that during the course of preparation of the case for arguments it transpired that partition proceedings had earlier taken place. No details as to how the said fact came to the notice of plaintiff No.3/petitioner have been brought forth in the application or before this Court at the time of arguments.

In view of the above, I do not find any merit in the present civil revision petition which is dismissed.

07.12.2021
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO