

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-8551 of 2017 (O&M)  
Date of decision: 28.09.2022

Som Dutt and another

..Petitioners

Versus

Ruldu and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lajpat Sharma, Advocate  
for the petitioners.

Mr. Suresh Kumar Kaushik, Advocate  
for the respondent no.1.

ANIL KSHETARPAL, J(Oral)

The defendants, in a suit, filed by the plaintiff for grant of decree of declaration with a consequential relief of permanent injunction, claiming to be the owners in possession on the basis of a registered transfer deed dated 12.06.2001 have come up in the revision petition.

The trial Court has permitted the plaintiff to examine PW4 and PW5 as witnesses. They are the aunts of the plaintiff. In fact, the grand mother and one of the aunt of the plaintiff executed two transfer deeds on 12.06.2001 separately in favour of the plaintiff as well as defendant no.3 to 6. The plaintiff filed a suit claiming declaration on the basis of the aforesaid transfer deed. The plaintiff's grand mother-Smt. Sunheri Devi and Smt. Rajni (aunt) were impleaded as defendant no.1 and 2 in the suit. The plaintiff in order to prove his case led evidence. The defendant no.3 to 6 while leading evidence produced affidavits of Smt. Rajni (aunt) alleging that

the aforesaid transfer deed was not executed by her.

It may be noted here that the plaintiff's witnesses were never confronted with the aforesaid affidavit of Smt. Rajni. In those circumstances, the plaintiff has been permitted to examine Smt. Savitri Devi daughter of Smt. Sunheri and Smt. Krishna Devi daughter of Sh. Sishu, as the witnesses. In such circumstances, the trial court has correctly exercised its discretion.

The learned counsel representing the petitioners contends that the plaintiff did not reserve a right to lead the rebuttal evidence and therefore, he is not entitled to lead evidence in rebuttal.

There is no dispute with the aforesaid proposition of law. However, the case is required to be decided on the preponderance of evidence. Here is the case where the defendant no.2 after having remained ex-parte has sent an affidavit which has been produced by the defendants in their evidence alleging that a registered transfer deed has not been executed by her. The plaintiff was never confronted with the aforesaid affidavit when he appeared in evidence. In such circumstances, the evidence already led by the plaintiff is necessary for the adjudication of the case.

The learned counsel representing the petitioner submits that his counsel has not been given opportunity to complete the cross-examination of PW4 and PW5.

It is evident from the reading of the order that the learned counsel started cross-examining the witnesses. Due to recess for lunch, the case was kept for the post lunch session, however, the counsel did not appear on the ground that he is arguing before some other court. Such action of the learned counsel can only be deprecated in the strongest term. A counsel,

who has already appeared in the court and started the cross-examination cannot except with the leave of the court concerned go to another court.

Hence, the petitioner does not deserve any indulgence.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

September 28, 2022  
*nt*

(ANIL KSHETARPAL)  
JUDGE

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|----------------------------------|---|---------------|
| <i>Whether speaking/reasoned</i> | : | <i>Yes/No</i> |
| <i>Whether reportable</i>        | : | <i>Yes/No</i> |