

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

118

CR-1130-2022

Date of decision: 30.03.2022

Mohd. Alim

.....Petitioner

Versus

Rizwan and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ravi Malik, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner-plaintiff by way of the instant revision petition filed under Article 227 of the Constitution of India is praying for setting aside the order dated 22.02.2022 passed by the learned Civil Judge (Jr. Divn.), Jagadhri (Annexure P-5) whereby the application (Annexure P-2) filed by him for summoning the clerk of the Municipal Corporation, Yamuna Nagar with record of assessment register No.546 (Page No.67) for the year 2009-10 along with other attached documents in civil suit bearing No.CS-1682/06.08.2015 titled as 'Mohd. Alim Vs. Rizwan and another', was dismissed

Learned counsel for the petitioner *inter alia* contends that the Court below gravely erred in dismissing the application (Annexure P-2) without appreciating that in the said civil suit, the petitioner-plaintiff had not only produced evidence but also proved the same. Respondent-defendant No.2 in his evidence had produced an agreement to sell dated 12.03.2014 before the Court below which had been exhibited as Ex.D1 and which was allegedly executed by respondent-defendant No.1 in favour of respondent-defendant No.2 on the basis of assessment register No.546 (Page No.67) for the year 2009-10. He further submitted that during his cross-examination he had categorically

deposed that at the time of agreement to sell he was in possession of a photocopy of the sale deed besides also stating that he had seen the document Ex.D1. It was also stated that the contents of the sale deed No.188 dated 09.4.2010 did not find reflected in the agreement to sell. Learned counsel thus submitted that the Court below failed to appreciate that in fact the evidence in rebuttal was required for controverting the evidence which had been led by the respondents-defendants as the alleged agreement to sell was a forged and fabricated document. Learned counsel further submitted that the factum of the alleged agreement being a forged and fabricated document was also evident from the fact that the sale deed pertained to the year 2010 whereas the alleged agreement was of the year 2014. Not only that, the alleged entries in the Municipal Corporation record were in the name of Mohd. Irfan and hence it was incomprehensible as to how respondent-defendant No.1 was competent to execute the alleged agreement of the property owned by another person. It was submitted that by declining his application (Annexure P-2) merely on technicalities it had resulted in grave miscarriage of justice.

I have heard learned counsel for the petitioner and perused the material placed on record including the impugned order.

Admittedly, on 09.12.2019, learned counsel for the petitioner-plaintiff tendered the certified copy of the sale deed as Ex.P11 and closed his affirmative evidence. Subsequently, respondent-defendant No.1 also tendered his affidavit on 06.01.2020 along with agreement to sell dated 12.03.2014 as Ex.D1. Thereafter, learned counsel for respondent-defendant No.1 closed his evidence on

28.01.2020 by making a statement to the said effect. The oral evidence of respondent-defendant No.2 was also closed by her counsel on 09.03.2020 and her documentary evidence was closed on 09.02.2021. Thereafter, it was at the stage of rebuttal evidence that the petitioner-plaintiff filed the application (Annexure P-2) contending that the evidence in rebuttal was essential to controvert the evidence which had been led by the defendants. It is not disputed rather it is a matter of record that the petitioner-plaintiff did not reserve his right to lead rebuttal evidence either at the time of closing his affirmative evidence or at any time before the defendants' evidence started. In the circumstances, the impugned order cannot be faulted with.

Accordingly, the instant revision being devoid of merit is dismissed.

30.03.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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