

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

CR No.3420 of 2022 (O&M)

Date of Decision: 06.12.2022

Punit Miglani

..... Petitioner

Versus

Ranjit Singh Khurana and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Mahir Sood, Advocate
for the petitioner.

Mr. Maninder S. Saini, Advocate
for respondent No.1.

Mr. Avtar S. Khinda, Advocate
for respondent No.3.

MANJARI NEHRU KAUL J. (Oral)

CM No.10536-CII of 2022

Application is allowed as prayed for.

CR No.3420 of 2022 (O&M)

Mr. Avtar S. Khinda, Advocate has appeared and filed his power of attorney on behalf of respondent No.3 today in the Court and the same is taken on record.

The petitioner-plaintiff has filed the present petition under Article 227 of the Constitution of India for impugning the order dated 17.08.2022 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Phagwara.

Learned counsel for the petitioner *inter alia* contends that respondent No.3 during the course of his cross-examination, deposed that two firms namely, Somsons Export and Upkar Diesel Spares were being run on the suit property. It was submitted that the above-said facts came to light for the first time during his cross-examination as the same were neither pleaded in the original written statement nor in the amended written statement. Therefore, to rebut the said facts, it was necessary to examine the clerk of VAT (Excise and Taxation) Department, failing which, the petitioner would suffer from irreparable loss. Learned counsel further contended that the trial Court had failed to appreciate that the counsel for the petitioner had closed the evidence in the affirmative on behalf of the plaintiff and thus, in the circumstances, the petitioner could not be denied the opportunity to lead evidence in rebuttal, more so, when the onus of proof qua issue No.5 was put on the respondents. In support thereof, reliance was placed upon a judgment of this Court passed in “***Jaswinder Kaur and another vs. Devinder Singh and others***”, 1983 (2) RCR (Rent) 57.

Per contra, learned counsel appearing for respondent No.3 has vehemently controverted the submissions made by the counsel opposite by urging that the onus to prove issue No.2 *qua* adverse possession was on the petitioner, therefore, it was for him to lead evidence in the affirmative to prove his case and no opportunity to lead evidence in rebuttal could be granted to him. It was further contended that even otherwise the petitioner had not reserved his right to lead evidence in rebuttal, therefore, the trial Court could not be faulted with,

for passing the impugned order.

I have heard learned counsel for the parties and perused the relevant material on record.

At the outset, it would be relevant to observe here that a party cannot be allowed to lead evidence in rebuttal unless it reserves its right in the said regard while closing its evidence in the affirmative or at any time before the commencement of the evidence of the opposite party. Still further, evidence in rebuttal can be led only *qua* those issues, whose burden of proof is on the opposite party.

Adverting to the case in hand, it is a matter of record that the petitioner did not reserve his right to lead evidence in rebuttal either at the time of closing his evidence in affirmative or prior to commencement of the evidence of the defendants. The case law relied upon by learned counsel would not come to his rescue as in the instant case, there was no statement made by learned counsel for the petitioner to the effect that he was closing the evidence on behalf of the petitioner in affirmative “only”.

This Court further concurs with the submissions made by the learned counsel for the respondents that since the onus to prove issue No.2 was on the petitioner, he could not seek to lead evidence in rebuttal *qua* the same. It was incumbent upon the petitioner to lead evidence in the affirmative to substantiate his plea of adverse possession. He cannot be permitted to do the same at this stage by leading evidence in rebuttal. Furthermore, merely because the case was fixed for “rebuttal evidence, or for arguments” by the trial Court, it

would not by itself confer the right upon the petitioner to lead evidence in rebuttal.

As a sequel to the above, the instant petition being devoid of any merit is dismissed.

The trial Court is directed to proceed with the trial as per the directions given by this Court in **CR No.1335 of 2022** vide order dated 19.04.2022.

(MANJARI NEHRU KAUL)
JUDGE

06.12.2022

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