

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

112

2023:PHHC:093962

CR-782-2018

Date of decision: 25.07.2023

HARBHAJAN SINGH @ BHANGA SINGH

..Petitioner

Versus

GURCHARAN SINGH @ CHARAN SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. P.K.S. Phoolka, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is a defendant in a pending suit for grant of decree of permanent injunction filed by the plaintiff (respondent herein). The plaintiff has prayed for a restraining order to the defendant from transferring the electric connection of a tubewell. He also prays for the grant of a decree of mandatory injunction directing the defendant to transfer the electric tubewell connection in the name of the plaintiff. The entire suit of the plaintiff is based upon an alleged affidavit sworn in by the defendant to transfer the connection in favour of the plaintiff. The defendant while contesting the suit denied execution of the aforesaid affidavit.
2. On appreciation of pleadings, the trial Court culled out the following issues:-

- “a) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- b) Whether the plaintiff has no cause of action to file the present suit? OPD*
- c) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- d) Whether the plaintiff has concealed the material facts from the Court? OPD*

- e) Whether the plaintiff has not come to the Court with clean hands? OPD*
- f) Whether the suit has been filed by the plaintiff only to harass the defendants? OPD*
- g) Relief.”*

3. The plaintiff led his affirmative evidence. He closed his evidence while reserving his rights to lead rebuttal evidence. Thereafter, the defendant led his evidence. When the case was at the stage of rebuttal, an application filed by the plaintiff to examine handwriting and fingerprint expert to prove the signatures of the defendant on the affidavit has been allowed by the trial Court. Aggrieved thereof, the defendant has filed the revision petition.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the petitioner contends that the plaintiff cannot be permitted to lead affirmative evidence at the stage of rebuttal. He submits that in rebuttal evidence, the plaintiff can be permitted to lead evidence only with respect to the issues, onus whereof was on the defendant.

6. He submits that the evidence sought to be led by the plaintiff does not fall within the scope of issues B to F.

7. On the other hand, the learned counsel representing the respondent (plaintiff) submits that the counsel representing the plaintiff reserved the right to lead rebuttal evidence, hence, the Court has correctly allowed the application.

8. This Court has analyzed the arguments of the learned counsel representing the parties. In fact, the issue in question stands answered

against the respondent by a Division Bench in Surjit Singh and others Vs. Jagtar Singh and others, 2007 (1) RCR (Civil) 537. It has been held that the plaintiff in rebuttal evidence can be permitted to lead evidence only with respect to the issues, the onus of which was on the defendant. In fact, the aforesaid judgment was again reiterated by another Division Bench in Jagdev Singh and other Vs. Darshan Singh and others, 2007(1) RCR (Civil) 794.

9. Keeping in view the consistent position of law, the order passed by the learned trial Court on 04.01.2018 is not sustainable. Hence, the same is set aside.

10. The revision petition is allowed.

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

July 25th, 2023

(ANIL KSHETARPAL)
JUDGE

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