

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

CR-707-2023(O&M)

Date of decision:-3.2.2023

Radhey Sham

...Petitioner

Versus

M/s Sham Cotton & Ginning Mills, Kotkapura and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Sandhu, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Radhey Sham had filed a suit against defendants M/s Sham Cotton & Ginning Mills, Kotkapura and many others as an indigent person. On getting notice, the defendants had put in appearance and offered a contest. Issues on merits were framed. The plaintiff was given several opportunities to lead evidence. Since he failed to conclude his evidence, the same was closed by the order of the Court.

2. Feeling aggrieved, the plaintiff had approached this Court by way of filing civil revision bearing CR-5266-2022, which was allowed vide order dated 17.1.2023 observing that though the plaintiff has been highly negligent in not concluding his evidence in case, which is pending for more than 10 years but in the interest of justice, one more opportunity

was allowed to him, subject to payment of Rs.15,000/- as costs. The plaintiff had then availed of that opportunity to lead evidence. Thereafter, the defendants had completed their evidence. The plaintiff had then filed an application under Section 151 CPC for permission to lead evidence in rebuttal for summoning concerned Clerk of SA & B, Office of State Bank of Patiala, now State Bank of India, Main Branch at Civil Lines, Ludhiana along with the original NPA loan file etc.

3. That application was resisted by the defendants.

4. Vide the impugned order dated 9.1.2023, the application was dismissed. The operative part of the impugned order runs as under:

3. Perusal of the file reveals that plaintiff has filed the present suit for declaration that plaintiff is owner of land measuring 26 kanal 0 marla as detailed in the head note of the plaint. As per averments made in the plaint, plaintiff has pleaded in para No.4 of the amended plaint that during the pendency of the suit, defendant No.42 had sold 21 kanal 3 marla land for sum of Rs.1,80,10,000/- through auction. So plaintiff had already taken this plea in his plaint and hence this piece of evidence has to be brought by him in his affirmative evidence and not in rebuttal.

4. It is pertinent to mention here that issues in the present case were framed on 11.9.2018 and since then the plaintiff had been leading his evidence. Thereafter evidence of plaintiff was closed by order on 20.9.2022. So the plaintiff had ample opportunity to lead his evidence but he failed to lead evidence in affirmative and now plaintiff cannot be allowed to fill up the lacuna left by him in

rebuttal. Plaintiff cannot be allowed to lead evidence in rebuttal as the same is not permissible under law. Hence, present application stands dismissed.

5. Feeling aggrieved by the said order, the plaintiff has approached this Court by way of filing the present revision petition.

6. I have heard learned counsel for the petitioner besides going through the record and I find that the revision petition is absolutely without merit.

7. As mentioned above, the plaintiff had been dragging his feet in the matter, taking the things in a very casual and sluggish manner, resultantly since he failed to conclude his evidence after availing of several opportunities, the same was closed by order of the Court. However, when he approached this Court, one more opportunity was granted to him to complete his evidence on payment of costs of Rs.15,000/-. Thereafter, the defendants concluded their evidence. Now the plaintiff wants to lead evidence, which could be led in affirmative evidence and not in rebuttal.

8. The attention of this Court has been drawn to the issues framed in this case reproduced in para No.5 of the revision petition. A perusal thereof goes to show that with regard to the issues, which are to be proved by the defendants with onus of proof placed on defendants, the said issues are legal in nature. There is no specific issue with regard to factual controversy on which the plaintiff could lead evidence in rebuttal by summoning witness, which he intends to do by filing application under Section 151 CPC. The plaintiff can certainly be not allowed to lead

evidence, which could be led in affirmative evidence only with regard to the issues which the plaintiff was required to prove.

9. I do not find any illegality or infirmity in the impugned order dismissing the application under Section 151 CPC so filed by the plaintiff for permission to examine witness in rebuttal. The impugned order is upheld.

10. Finding no merit in the revision petition, the same stands dismissed.

3.2.2023

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(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**