

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

129

CR No.903 of 2024
Date of Decision : 19.03.2024

Surinder SinghPetitioner

VERSUS

Amir Chand and AnotherRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Varun Sharma Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the order dated 08.01.2024 dismissing the application filed by plaintiff-petitioner for demarcation of Khasra No.5//23/1 and 23/2 village Khusropur, Hadbast No.246, Tehsil and District Jalandhar, Punjab.
2. The Trial Court vide the impugned order dated 08.01.2024 dismissed the application on the ground that the evidence now sought to be led is in respect of issue No.1 onus of which was upon the plaintiff-petitioner himself and despite availing numerous opportunities and examining two witnesses in his evidence the plaintiff-petitioner is now wanting to lead evidence in rebuttal in order to prove the said fact.
3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner does not want to lead evidence in rebuttal, however, it is simply an application for getting the area demarcated and hence the same ought not to have been dismissed.

4. Heard.

5. In the present case the plaintiff-petitioner filed a suit for possession of the land measuring 04 *marlas* comprised in Khasra Nos.5//23/1 and 23/2, Village Khusropur, Hadbast No.246, Tehsil and District Jalandhar, as entered in Jamabandi for the year 2011-2012. It was the case set up by the plaintiff-petitioner that he had purchased the suit property vide sale deed dated 07.04.2011 bearing Vasika No.350 and was in actual and physical possession of the property. It was further the case set up that defendant-respondent No.1 had purchased the land measuring 05 marlas 140 sq. ft. comprised in Khasra Nos.2//26, 17/18/1, 24/2/1, 4//2/1, 5//18/1, 13/2, 14/1, 18/1 and 23/3 situated in Village Khusropur, Tehsil and District Jalandhar from defendant-respondent No.2 and that they had encroached upon the suit property taking advantage of absence of the plaintiff-petitioner. The Trial Court on the basis of pleadings framed the following issues :

1. Whether the plaintiff is entitled to relief of possession as prayed by him in the headnote of the plaint ? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed by him in the headnote of the plaint ? OPP
3. Whether suit filed by plaintiff is legally not maintainable ? OPD
4. Whether the plaintiff has come to the court with clean hands ? OPD

5. Whether the plaintiff has got no cause of action and locus standi to file the present suit ? OPD

6. Relief.

6. The onus of issue No.1 was on the plaintiff-petitioner. Despite several opportunities the plaintiff-petitioner only examined 02 witnesses and now at the stage of rebuttal evidence moved the present application for demarcation of the land. The argument of learned counsel for the plaintiff-petitioner that the application is not for leading evidence in rebuttal but is only for demarcation of the land cannot be accepted. Merely by changing the nomenclature the prayer in the application cannot be ignored. Infact, the plaintiff-petitioner is wanting to lead evidence in rebuttal on issue No.1 onus of which is on him.

7. A Division Bench of this Court in case of **Surjit Singh & Ors. vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** has held as under :

“15. In our opinion, Order 18 Rule 3 of the Civil Procedure Code would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 of the Civil Procedure Code. The rule clearly postulates that "the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties". No matter, how liberally a provision in the statute is

required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (supra). It has been held that if a statement is made by the Advocate for the plaintiff that "the plaintiff closes its evidence in the affirmative only," the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned Single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur's case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the

observations of the learned Single Judge in the case of M/s Punjab Steel Corporation (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned Single Judge run contrary to the law laid down by the Division Bench in the case of Smt.Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra).”

8. In view of the above, I do not find any merits in the present revision petition, which being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.03.2024

jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO