

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

105

CR-5088-2019 (O&M)

Date of decision:06.03.2024

Joga Singh

... Petitioner

Vs.

Jarnail Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Manoj Khokhar, Advocate for the petitioner.

Mr. M.S. Dhami, Advocate for respondents No.1 and 2.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by the petitioner/defendant No.4 against the order dated 26.07.2019 passed by the Additional Civil Judge (Sr. Division), Balachaur, District Shaheed Bhagat Singh Nagar vide which the plaintiff has been allowed to examine PW5, namely, Ram Nath in rebuttal evidence.

2. Brief facts that are relevant for adjudication of the present revision petition are that the plaintiffs filed a suit for possession of the property in dispute situated in village Sujjowal, Tehsil Balachaur, (description of property given in plaint) against defendants No.1 to 3. The present petitioner is defendant No.4 in the said suit. It has been alleged by the plaintiffs that in the suit property, the plaintiffs had constructed a room. Defendant No.1 – Joginder Singh approached the plaintiffs to rent out the room for a few months. Accordingly, the plaintiffs allowed defendant No.1 to reside in the said room. Thereafter, defendants No.2 and 3, who were son and daughter-in-law respectively of defendant No.1 also started residing

there with him. As per the plaintiffs' version, in the first week of October, 2013, the plaintiffs asked them to hand over the possession of the said room but defendants No.1 to 3 refused to pay any heed to their request. It has been alleged that in the first week of October, 2013, defendant No.4 (petitioner herein), who had his property situated in the northern side of the property in dispute, had merged the same into his property by raising a wall and had thereby taken illegal possession. Hence, the present suit was filed.

3. After issuing notice of the suit, defendants No.1 to 3 filed their written statement. Besides, raising the objection regarding maintainability also denied the material averments made in the suit. From the pleadings of the parties, issues were framed vide order dated 09.10.2014. Thereafter, the plaintiffs led their evidence and it was closed in affirmative on 18.01.2018.

4. On the other hand, defendants also led their evidence and it was closed in affirmative on 22.07.2019 and on 24.07.2019, the matter was adjourned by the trial Court for 26.07.2019 for addressing arguments. However, on 26.07.2019, the plaintiff tendered an affidavit of PW5 Ram Nath, who is a retired Kanungo and sought to examine the said witness in rebuttal. The defendants raised a objection to the same. The said objection was declined by the trial Court vide the impugned order dated 26.07.2019. Aggrieved of the said order, the revision petitioner/defendant No.4 has knocked the doors of this Court by way of the filing of the present revision petition.

5. Learned counsel for the petitioner has argued that when the plaintiffs have closed their evidence without reserving any right to lead rebuttal evidence, they cannot be allowed to lead the evidence in rebuttal.

Only two issues were framed and the onus of issue No.1 was upon the plaintiffs and in support thereof, they led their evidence in affirmative. To support his contention, learned counsel for the petitioner has placed reliance upon a judgment of this Court rendered in **Raj Kumari Vs. Surinder Singh & others, 2012 (1) PLJ 396**. He has further contended that the impugned order passed by the trial Court allowing the rebuttal evidence to the respondents/plaintiffs is contrary to the principles of law settled by a Division Bench of this Court in **Avtar Singh & another Vs. Baldev Singh & others, 2015 (1) CCC 728** to the effect that in case the plaintiffs do not reserve the right to lead the rebuttal evidence, their right to claim the said benefit stands forfeited and the same cannot be allowed. Hence the impugned order dated 26.07.2019 passed by the trial Court is contrary to the settled principle of law settled in **Avtar Singh's case (supra)**. He has argued that in the light of Order 18 Rule 3 CPC, the plaintiffs have to reserve the right to lead rebuttal evidence which the plaintiffs have not done and the violation of this mandatory provisions has rendered the order dated 26.07.2019 passed by the trial Court to be illegal. He has further argued that the plaintiffs did not examine PW5 Ram Nath in affirmative, even though this evidence was well within their knowledge at that time. The plaintiffs therefore did not exercise due diligence and hence, in view of the fact that the onus of issue No.1 was upon the plaintiffs, the evidence was mandatorily required to be led in affirmative.

6. On the other hand, learned counsel for the respondents/plaintiffs has submitted that even if, the right to lead the rebuttal evidence was not claimed at the time of closing the affirmative evidence, still keeping in view

the facts and circumstances of the case, the same can be allowed by the Court, which jurisdiction has been exercised by the trial Court in the facts and circumstances of the present case, as the tenor of the impugned order clearly shows that the said evidence is required for in order to come to a correct decision. Hence, the Court was well within its jurisdiction to allow the required evidence and the present revision petition deserved to be dismissed.

7. I have heard learned counsel for the parties and perused the record.

8. The first question which arises for the consideration of this Court in the present civil revision petition is that when, once the respondents/plaintiffs did not reserve their right to lead the rebuttal evidence at the time of closing their affirmative evidence then whether, the plaintiffs can be allowed to lead the rebuttal evidence or not. The law on the said aspect is clear keeping in view the judgment of the Division Bench of this Court in **Avtar Singh's case (supra)**.

9. Learned counsel for the respondents/plaintiffs has not been able to distinguish the case of the petitioner that the same is not covered in his favour as per the judgment in **Avtar Singh's case (supra)**. The other argument which is being raised by the learned counsel for the respondents/plaintiffs is that the tenor of the impugned order shows that the said evidence is required for the proper adjudication of the case. In case, the Court on its own require any evidence to be on record and in its wisdom pass any appropriate order, the same will be within the jurisdiction of the Court. But in the instant case, only two issues were framed. Onus to prove

issue No.1 was upon the plaintiffs and to discharge the onus behind this issue, they led their evidence in the affirmative, without reserving their right to lead rebuttal evidence. Otherwise also, plaintiffs want to examine Kanungo in rebuttal for proving the demarcation report. But as onus to prove issue No.1 was upon the plaintiffs, so this witness could not be examined in rebuttal evidence, after having led their evidence in the affirmative on the issue the onus of which was on them.

10. Keeping in view the above, the impugned order dated 26.07.2019 (Annexure P-9) passed by the trial Court is not sustainable as per law and is accordingly set aside. The present civil revision petition is allowed in above terms.

11. All pending applications, if any, also stand disposed of accordingly.

06.03.2024

harjeet

(SUKHVINDER KAUR)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |