

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****111****CR-4416-2018 (O&M)****Date of Decision : 28.03.2025**

Gurmeet Singh and Another

....Petitioners

VERSUS

Jaswinder Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jaiswal, Advocate for the petitioners.

Ms. Shubreet Kaur, Advocate for respondent No.1.

Ms. Aashna Gill, Advocate for respondent No.2.
(through hybrid mode).**ALKA SARIN, J. (Oral)**

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging order dated 02.05.2018 whereby application filed by defendant-petitioners herein to de-exhibit the documents (Ex.P-8 and Ex.P-9) has been dismissed.

2. Learned counsel for the defendant-petitioners would contend that in the present case the suit is for mandatory injunction to the effect that the defendant-petitioners be directed to remove the illegal construction as well as for permanent injunction restraining the defendant-petitioners from encroaching upon the street in question. Learned counsel for the defendant-petitioners would further contend that Issue No.1 as framed by the Trial Court was "*Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP*". Since the onus was on the plaintiff-respondent No.1, the evidence was to be led in affirmative. It is further the

contention that the plaintiff-respondent No.1 only tendered photocopies of the documents during his evidence, which was objected to by the defendant-petitioners and Ex.P-8 and Ex.P-9 were tendered in evidence at the time of rebuttal. It is further the contention of learned counsel for the petitioners that the said evidence could not have been accepted in evidence at the stage of rebuttal as this was the evidence which was to be led in affirmative. In support of his arguments, learned counsel for the defendant-petitioners has relied upon the judgments of this Court in the cases of **Hanumant Singh vs. Babu Singh & Ors.** [2010 (44) RCR (Civil) 777], **Nazar Singh vs. Kulbir Kaur & Ors.** [2019(1) RCR (Civil) 374], **Dinesh Kumar vs. State of Haryana** [2002(4) RCR (Civil) 366], **Gurnam Singh alias Urjan Singh vs. Jit Singh & Ors.** [1998(2) RCR (Civil) 392] and **Surjit Singh vs. Jagtar Singh** [2007(1) RCR (Civil) 537].

3. *Per contra* learned counsel for the plaintiff-respondent No.1 would contend that Ex.P-8 was already on the record and certified copy was tendered in evidence at the time of rebuttal. It is further the contention that Ex.P-9 was also tendered. Learned counsel for the plaintiff-respondent No.1 would further contend that the said documents were tendered in the presence of the counsel for defendant-petitioners and no objection was raised by the counsel. It has further been pointed out that the Trial Court while dealing with the application has left it open for the Court to comment at the stage of arguments and final decision of the case regarding the documents so tendered.

4. Heard.

5. In the present case, while leading his evidence in affirmative the plaintiff-respondent No.1 has tendered Ex.P-2 stating it to be a certified copy of order dated 29.06.1977, however, the same was only a photocopy which was objected to by the counsel for the defendant-petitioners. At the time of rebuttal evidence, the plaintiff-respondent No.1 tendered certified copy of order dated 29.06.1977 and exhibited the same as Ex.P-8 and also tendered *Jamabandi* for the year 2011-12 as Ex.P-9, which was tendered on 19.03.2018. Copy of the order has been appended with the application being CM-641-CII-2020 as Annexure R-1/4. A perusal of the said order reveals that the document was tendered in the presence of the counsel for the parties and no objection was raised by counsel for the defendant-petitioners when the said document was tendered. There can be no quarrel with the proposition of law laid down in the cases of **Hanumant Singh** (supra), **Nazar Singh** (supra), **Dinesh Kumar** (supra), **Gurnam Singh alias Urjan Singh** (supra) and **Surjit Singh** (supra). It is trite that no evidence can be led in rebuttal on an issue onus of which is on the party. However, keeping in view the peculiar circumstances of the case, where the documents were tendered by the plaintiff-respondent No.1 in the presence of the counsel for the defendant-petitioners, who did not raise any objection and had an objection been raised at the relevant point of time the plaintiff-respondent No.1 would have filed an appropriate application for tendering the said documents in evidence in accordance with law.

6. In view of the above, the application filed by the defendant-petitioners is allowed to the extent that Ex.P-8 and Ex.P-9 would not be

considered as evidence led by the plaintiff-respondent No.1 and are accordingly struck off. However, plaintiff-respondent No.1 would always be at liberty to file an appropriate application for leading evidence in accordance with the law. In case any such application is filed, the same shall be dealt with by the Trial Court in accordance with the law. It is made clear that any observation made herein shall not be considered as an expression of opinion on the merits of the case.

7. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

28.03.2025
jk

(ALKA SARIN)
JUDGE

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