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Court : Punjab and Haryana

Decided On : Oct-14-2015

Judge : Raj Mohan Singh

Appeal No. : Civil Revision No. 5874 of 2015 (O&M)

Appellant : Ranjit Singh

Respondent : Jitender Singh

Judgement :

1. Plaintiff has assailed order dated 27.07.2015 passed by Civil Judge (Sr. Divn.) SAS Nagar, Mohali vide which application for leading expert evidence on account of framing of new issue No. 1-A has been declined by the trial Court.
2. The suit for possession as owner (although plaintiff claim himself to be in physical possession) in respect of flat in question by means of specific performance of agreement to sell dated 20.01.2005 has been filed seeking direction to execute the sale deed after completing all the requirements of getting NOC and after adjusting the earnest money. Permanent injunction has also been sought restraining the defendant from alienating the plot except to the plaintiff or his nominee.
3. Defendant has contested the suit alleging fraud. On the other hand defendant has also sought restoration of possession of flat in question by means of filing suit under Section 6 of the Specific Relief Act.

4. The issues were framed on 13.09.2006 in the following manner:-

i) Whether the plaintiff is entitled to possession as prayed for? OPP

ii) Whether the plaintiff is entitled to permanent injunction? OPP

iii) Whether the suit is not maintainable? OPD

iv) Whether the plaintiff has not come to the court with clean hands? OPD

v) Whether the suit is barred by limitation? OPP

vi) Whether the suit is bad for non joinder of necessary parties? OPD

vii) Relief."

5. Evidence was led by the plaintiff and defendant. Plaintiff closed rebuttal evidence on 03.12.2013 after availing more than 50 opportunities. Defendant claimed that the plaintiff has played fraud with him as well as with the Court and has managed to leave the country in connivance with one Sh. C.S. Brar who is pursuing the litigation by misrepresenting the original plaintiff Ranjit Singh with whom the agreement was entered into.

6. Additional issue was framed in the following manner:-

"1A. Whether the plaintiff entitled to specific performance of the agreement dated 20.01.2005 directing the defendant to execute the sale deed?"

7. Perusal of issue No. 1 as originally framed and issue No. 1-A as framed on 11.02.2015, if read jointly would give one common feature that in a suit for possession by way specific performance, claim regarding possession is the main relief. Plaintiff claims himself to be in possession, therefore, prayer for specific performance of the agreement to sell dated 20.01.2005 has been claimed in the additional issue.

8. The plaintiff has already led evidence in affirmative and his rebuttal evidence was closed on 03.12.2013 after availing numerous opportunities. The onus of the issue as framed has to be discharged by the plaintiff. The additional issue so

framed does not create any such additional onus on the plaintiff to prove anything over and above the scope of issue No. 1 for which plaintiff had led evidence and sufficient opportunities were granted to the plaintiff to lead rebuttal evidence also. The expert evidence was required to be led by the plaintiff in an affirmative or in his rebuttal evidence when opportunities were provided to him in accordance with law.

9. By way of present application, plaintiff seeks expert evidence to be led after framing of issue No. 1-A which is similar to issue No. 1 except the prayer for specific performance on the plea that possession is already with the plaintiff. In a suit for specific possession by way specific performance, plaintiff has to lead evidence on the parameters of proving lawful execution of agreement, passing of consideration, readiness and willingness and exceptions in terms of Section 20 of Specific Relief Act having no application to the rights of the plaintiff.

10. Framing of additional issue No. 1-A does not reopen the case in favour of plaintiff to seek rebuttal evidence at second rebuttal. There is no such stage in procedural law. Plaintiff had already led evidence, even he availed numerous opportunities in rebuttal. Expert evidence was to be led in affirmative particularly when onus of both the issues No. 1 and 1-A is on the plaintiff. Issue No. 1-A cannot be read over and above issue No. 1 in terms of requiring plaintiff to lead evidence in affirmative or in rebuttal. Since both the stages have already gone at the time when rebuttal evidence was closed on 03.12.2013, therefore, according to this Court no such opportunity of rebuttal on second occasion can be granted to the plaintiff as the additional issue does not require any other further evidence.

11. Leading of expert evidence as prayed in the application cannot be granted at this stage, in view of the fact that plaintiff had already led evidence by availing numerous opportunities under issue No. 1 and was also granted opportunities to lead rebuttal evidence. Plaintiff has already been declared as proclaimed offender. The application in question has not been supplemented by affidavit of plaintiff, rather affidavit of attorney has been pressed into service.

12. Defendant has claimed that the plaintiff is not coming forward to prosecute the case and there are number of disputed and manipulated documents and the

defendant has disputed the same.

13. Examination of Handwriting and Document Expert for comparison of disputed and standard signatures of the plaintiff cannot be granted at this stage, when the case itself is at final stage of argument. The evidence could have been led on earlier occasion when opportunity was given to the plaintiff to lead evidence in rebuttal and this evidence could have been led in affirmative as well.

14. The additional issue has been framed at the instance of the plaintiff at a belated stage when the case itself is fixed for arguments. The plea of plaintiff that the expert of the defendant has only taken the signature appearing on the second page into consideration and has left the signature of Ranjit Singh appearing on first page of the affidavit Ex.P-4 cannot be considered at this stage particularly when signature of Ranjit Singh on different documents are claimed to be forged and fabricated.

15. This Court is not in a position to opine on the subject matter of the case at this stage as it may prejudice the case of either party at the trial. Since both the parties have already led evidence and they knew about the case of each other, therefore, framing of issue at such a belated stage even if permitted, the plaintiff cannot be granted any opportunity of leading expert evidence at second rebuttal stage particularly when the evidence could not be led in affirmative in respect of issue No. 1 which is on the similar platform.

16. A Division Bench of this Court in Surjit Singh v. Jagtar Singh, 2007 (1) RCR (Civil) 537 (PandH) (DB) interpreted the provision in terms of Order 18, Rule 3CPC and examined the scope and ambit of right of the plaintiff to lead evidence in rebuttal on the issue, the onus of which was on the plaintiff. The Division Bench held that the party cannot be permitted to lead evidence on the issue for which burden of proof was on that party. Reference can be made to para 15 of the judgement:-

"21. In our opinion, Order 18, Rule 3 of the CPC 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 CPC. 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 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)."

17. Again in Jagdev Singh and others v. Darshan Singh and others, 2007 (1) RCR (Civil) 794 the view was reiterated by the Division Bench of this Court by relying upon earlier Division Bench's judgment in Surjit Singh's case (supra). It was reiterated that the plaintiff cannot as a matter of right lead evidence in rebuttal on issues, the onus of which is on the plaintiff. Para No. 6 of the judgment reiterated the view taken in Surjit Singh's case (supra) as reproduced in earlier part of the judgment.

18. In view of aforesaid, no indulgence can be granted in this revision petition. Consequently this revision petition is dismissed.

Petition dismissed.

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