
(2006) 02 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2207 of 2003

Naranjan Singh

APPELLANT

Vs

Ajaib Singh and Another

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3, Order 8 Rule 6A(2), Order 8 Rule 6A(3), Order 8 Rule 6A(4), 115

Citation : (2006) 142 PLR 789 : (2006) 2 RCR(Civil) 281

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Ashok Singla, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed u/s 115 of the Code of the Civil Procedure, 1908 (for brevity, "the Code") prays for quashing the order dated 7.3.2003 passed by the learned Trial Court restraining the plaintiff-petitioner from adducing additional evidence at the stage of rebuttal and arguments. The aforementioned application was filed by the defendant-respondents.

2. Brief facts of the case are that the plaintiff-petitioner filed a suit for permanent injunction for restraining the defendant-respondents from interfering in any manner in his actual physical possession in respect of suit land or to dispossess him forcibly therefrom, except in due process of law. The suit was contested and the defendant-respondents set up a counter claim staking claim for possession of two biswas of land. After conclusion of evidence by both the parties, an application by defendant-respondents was filed for not permitting the plaintiff-petitioner to examine Shri Gopal Krishan, Document Expert, in rebuttal. That application has been allowed on the basic premise that no affirmative evidence in rebuttal would be permissible. The operation part of the order passed by the Trial Court is as under:-

4. Plaintiff is based his claim on various writings alongwith writing dated 28.5.1958 and in order to prove the writings, plaintiff has examined their affidavits in order to rebut the evidence of plaintiff, defendant has examined document expert Dr. Atul Kumar Singla and now plaintiff wants to rebut the rebuttal evidence led by defendant on that issue and Hon"ble Punjab and Haryana High Court in its latest decision in Dinesh Kumar Vs. State of Haryana and Others, has held that "plaintiff wanted to produce evidence to rebut the evidence led by defendants, on rebuttal to the evidence led by plaintiff on the issues, the burden of which was on the plaintiff. In my opinion, this cannot be allowed to be done.

So, in the present case, also, plaintiff wants to lead rebuttal evidence to rebut the rebuttal evidence led by defendant, which cannot be allowed in view of law laid down by Hon"ble Punjab and Haryana High Court. So application of defendants is allowed.

3. Mr. Ashok Singla, learned Counsel for the plaintiff-petitioner has argued that the trial court has committed grave error in law by restraining the plaintiff-petitioner from adducing the expert evidence of Shri Gopal Krishan Sharma because the counter claim set up by defendant-respondents is required to be treated as a cross suit or a separate suit under Order 8 Rule 6-A(2), (3) and (4) of the Code. According to the learned Counsel, the Trial Court has completely failed to consider the aforementioned legal aspects. In order to buttress his stand, learned Counsel has pointed out that separate sets of issues have been framed by the trial Court. On 22.10.1997 issues were framed on the suit filed by the plaintiff-petitioner and separate issues were framed in respect of counter claim, on 25.8.1998. Referring to the facts of the present case, learned Counsel has drawn my attention to issue No. 3-A framed in the case of the counter-claim, which is with regard to possession of two biswas of land. It has been maintained that writing dated 25.8.1958 regarding delivery of possession of part of the suit land was specifically pleaded as a defence in para 2 of the reply filed by the plaintiff-petitioner to the counter claim set up by defendant-respondents which in their replication has been specifically denied. The aforementioned item has been described as a forged and fabricated document by the defendant-respondents. It has been claimed that the aforementioned expert witness can be produced to rebut the evidence adduced by defendant-respondents as a chance is required to be given in defence to the counter-claim after closing of evidence by the defendant-respondents.

4. None has put in appearance on behalf of the respondents to controvert the arguments raised by Mr. Ashok Singla, Advocate. The matter cannot be adjourned as the revision petition is pending since 2003. On 8.5.2003 this Court has allowed the trial Court to hear the arguments but passing of the final order has been stayed. Moreover, a perusal of the record shows that the petition was admitted on 18.7.2005 for final disposal on 19.10.2005. The matter has been listed for 7.12.2005 and 11.1.2.006. Therefore, it is not possible to adjourn the

matter any further.

5. After hearing the learned Counsel, I am of the considered view that the order of the trial Court allowing the application of the defendant-respondents, restraining the plaintiff-petitioner from adducing evidence of expert witness is liable to be set aside. It is clear from the impugned order as well as record shown to this Court at the hearing that the defendant-respondents have set up a counter claim of possession in respect of some portion of land. In reply it appears that the plaintiff-petitioner has also stated that partial possession was delivered to him, which is evident from the writing dated 28.5.1958. On 22.10.1997, the following issues were framed in the suit filed by the plaintiff-petitioner:-

1. Whether plaintiff is in possession of the suit property and is entitled to permanent injunction as prayed for? OPP

2. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD

3. Whether the suit is bad for non-joinder of necessary parties? OPD

4. Relief

6. On 25.8.1998 following issues were framed in the counter claim:-

3A) Whether the defendant is entitled for possession of 2 biswas of land by way of counter claim as prayed for? OPD

"3B) Whether the counter claim is not maintainable? OPP

3C) Whether the counter claim has been filed within limitation? OPD

3D) Whether the defendants have no locus standi or cause of action to file the counter claim? OPP

7. It is also evident that the plaintiff-petitioner has already tendered the report of the expert Shri Gopal Krishan Sharma in pursuance to the opportunity granted by the trial Court. The plaintiff-petitioner deposited Rs. 200/- as diet money in the trial Court and thereafter Shri Gopal Krishan Sharma, Document Expert was summoned through dasti summons. When the case was posted for hearing on 6.1.2003, the expert witness has already placed on record an affidavit dated 6.1.2003 along with his report dated 2.1.2003. He was allowed to examine the writing dated 28.5.1958 and make comparison. It was after the aforementioned progress, that an application by defendant-respondent was filed restraining the plaintiff-petitioner to examine the expert. From the bare perusal of Order 8 Rule 6-A(2), (3) and 4) it is revealed that a counter claim has to be treated as a cross suit or a separate suit. The onus to prove issue No. 3-A with regard to possession of two biswas of land has been placed on the defendant respondents. If, they are to be treated as plaintiff by fiction of law then after adducing evidence by them, the defendant namely the present plaintiff-petitioner would be entitled to

controvert the evidence adduced by them. Following the aforementioned analogy it must be concluded that the plaintiff-petitioner is not in fact adducing affirmative evidence in rebuttal. He is only controverting the evidence adduced by defendant-respondent in support of his counter claim. It is further pertinent to mention that there is no requirement of any law that the plaintiff-petitioner is required to reserve his right to controvert the evidence of defendant-respondents, as has been provided for a different situation under Order 18 Rule 3 of the Code. Therefore, this petition deserves to be allowed.

8. For the reasons stated above, this petition succeeds and the order dated 7.3.2003 passed by the learned Trial Court is set aside. The plaintiff-petitioner is permitted to examine Shri Gopal Krishan Sharma as an expert. The parties are directed to appear before the trial Court on 6.3.2006. A copy of this order be also sent to the concerned Court.