

(1983) 02 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 658 of 1982

Subhash Chander and others

APPELLANT

Vs

Shanti Swaroop and others

RESPONDENT

Date of Decision: Feb. 4, 1983

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 2

Hon'ble Judges: I.S. Tiwana, J

Bench: Single Bench

Advocate: Amar Dutt, for the Appellant; K.S. Kanwar, for the Respondent

Judgement

I.S. Tiwana, J.

There are two Revision petitions Nos. 658 and 657 of 1982 arise out of the same litigation pending between the parties. Admittedly the petitioner-defendants are supporting the claim of respondent plaintiffs in a suit filed by the latter for possession of land measuring 28 kanals and 7 marlas by way of specific performance of a contract. Vide the impugned order dated December 17, 1981, the petitioners were disallowed to lead any evidence in support of the claim put forward ware by the plaintiffs. Vide a latter order dared February 2, 1982, the trial Court disallowed their claim with regard to there transposition as plaintiffs. These two orders are respectively impugned in these two petitions. The learned counsel for the parties are agreed that since the fate of the latter petition depends upon the result of the first one, both can be disposed of through this common order.

2.In order to appreciate the contention raised by the learned counsel for the petitioners I deem it proper to reproduce the order dated December 17, 1981, in extenso. It reads thus:-

Three D.Ws examined. Permission to take photographs for comparing signature was granted on the application. At this stage, it has been pointed out by defendants Nos. 1 to 3 counsel that there is no issue on defendants 4 to 10 for proving documents

and that the burden of proving issue No. 3 is on the plaintiffs. So in the circumstances permission granted to take photographs of the documents is hereby withdrawn and request of defendants 4 to 10 to examine expert is declined. If the defendants No. 4 to 10 have any interest for proving documents in question they are at liberty to move for transposing themselves as plaintiff. At this stage counsel for defts. 4 to 10 wants to move an application for transposing them as plaintiffs. Seeks short adjournment which is granted for 21.12.81.

As is apparent from the above noted order, it was during the course of proceedings when the petitioners and some of the other defendants having similar interest hid led their evidence to some extent in support of their case; rather in support of the case pleaded by the plaintiffs that the trial Court on an objection raised by the contesting defendants disallowed them to lead any evidence on the ground that the burden of the issues framed in the suit was not placed on them. As is already indicated, their latter prayer for transposition as plaintiffs was also disallowed vide order dated February 2, 1982 primarily on the ground of delay that occurred in making the prayer. Thus the short question that needs determination in the first petition is as to whether under the Code of Civil Procedure, a defendant who supports the case of a plaintiff can be allowed to lead evidence in respect of the case of the latter. The matter is not res integra as this precise question came for consideration of this Court in an earlier case reported as *Giani Zail Singh v. Election Tribunal II, Chandigarh* AIR 1964 P&H. 105. A.N. Grover, J., as his Lordship then was, after considering the provisions of Order 18, Rule 2 of the Code, in the light of some earlier precedents, held that the defendant supporting the cause of a plaintiff is not debarred from leading evidence by any express or implied provision in the Court, of apparently, neither have any reason to differ from this conclusion nor has any been pointed out to me. Order 18, Rule 2 lays down the order in which the parties have a right to state their case and produce their evidence. To my mind, this right to give evidence, is guaranteed to both the sides, i.e., the plaintiff and the defendant, even to a defendant who supports the case of a plaintiff no matter whether the party upon whom the burden of proof is placed does or does not produce any evidence. Such a denial of right to lead evidence to a defendant who has common interest with the plaintiff would also be against the principles of natural justice.

3. With the newly added sub rule (4) to Rule 2 of Order 18 in the year 1976 which sub rule of course was available even earlier in the form of explanation (i) added towards the end of sub-rule (3) as a result of the amendment introduced by this Court, there hardly can be any doubt that even independently of the above noted interpretation and implication of the earlier provisions of this rule, the Court has every right to permit such a defendant, though after recording reasons for the same, to examine any witness at any stage.

4. In view of the above, I find that there was no justification with the lower Court to debar the petitioners from leading the evidence which they wanted to. The

conclusion recorded by the said Court is obviously unsustainable and is thus set aside. In the light of this conclusion of mine, the learned counsel for the petitioners does not press the other petition and claims that the same may be dismissed as withdrawn.

5. Thus for the foregoing reasons I, while allowing Civil Revision No. 658, by setting aside the impugned order dated December 17, 1981 and directing the trial Court to proceed from the stage the trial had reached by that date, dismiss Civil Revision No. 657 as not pressed. I pass no order as to costs in either case.