

(2012) 04 P&H CK 0169

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2266 of 2012 (O and M)

Government Senior Secondary
School

APPELLANT

Vs

Lilu Ram and Others

RESPONDENT

Date of Decision: April 25, 2012

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (2013) 1 RCR(Civil) 520

Hon'ble Judges: M.M.S. Bedi, J

Bench: Single Bench

Advocate: J.S. Yadav, for the Appellant;

Final Decision: Dismissed

Judgement

M.M.S. Bedi, J.

Defendant has preferred this revision petition against the order dated 10.3.2012, invoking the jurisdiction under Article 227 of the Constitution of India. By virtue of the impugned order, the application filed by the plaintiff to produce an Expert in rebuttal evidence to establish that the age of the building in dispute is prior to the filing of the suit i.e., more than 35 years, has been allowed. The main grievance of the defendant-petitioner is that the plaintiff has closed his evidence in affirmative and that at the stage of production of rebuttal evidence, the plaintiff cannot be permitted to produce the building Expert as said evidence in rebuttal cannot be permitted in peculiar facts and circumstances of the present case. The trial Court relying upon the judgment in case Punjab Steel Corporation Vs. M.S.T.C. Limited, permitted the plaintiff-respondent to lead evidence in rebuttal. The judgment and decree relied upon by the Court stands overruled in another judgment in case Surjit Singh and Others Vs. Jagtar Singh and Others,

2. Counsel for the petitioner has, inter alia, argued that the trial Court has permitted the building Expert to be examined in rebuttal evidence despite the fact that there is no rebuttal issue requiring the production of said evidence.

3. With the assistance of the counsel for the petitioner, I have gone through the plaint, written statement, issues and copy of the replication filed by the plaintiff-respondent. The suit of the plaintiff-respondent is for permanent injunction to restrain the defendant-petitioner from demolishing or removing the construction of the houses of the plaintiff-respondent forcibly and illegally or from interfering in the peaceful possession of the plaintiff over the land and the houses mentioned in the plaint. The claim of the defendant-petitioner in the written statement as is apparent from copy of the written statement Annexure P-2, is that the plaintiffs have constructed their houses in land bearing Killa No. 3/2 (6-0) Rectangle 14 and have also encroached upon some portion of the land in Rectangle No. 11, killa No. 3/2, during pendency of earlier litigation. It has been denied that the plaintiff-respondents are owners in possession of the land bearing Killa No. 3/2 Rectangle No. 14. It has specifically been denied by the defendant-petitioner that the plaintiffs have raised construction of the houses more than 35 years ago. In the replication, the plaintiffs have reiterated that the houses are 35 years old.

4. Taking into consideration the nature of the controversy, the following issues have been framed by the trial Court for adjudication:-

1. Whether plaintiff is entitled for decree for permanent injunction as prayed for? OPP

2. Whether suit is not maintainable? OPD

3. Whether plaintiff has no cause of action and locus standi to file present suit? OPD

4. Whether plaintiffs are estopped to file the present suit? OPD

5. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD

6. Whether plaintiff has not come to Court with clean hands? OPD

7. Whether suit is barred by principles of res judicata? OPD

8. Relief.

5. So far as issue Nos. 1 & 6, mentioned hereinabove are concerned, the Court would be required to determine whether the plaintiffs-respondents are entitled for a decree for permanent injunction, simultaneously considering in the light of the plea taken by the defendants-petitioners whether the plaintiffs-respondents have not come to the Court with clean hands for the purpose of adjudication of Issue Nos. 1 & 6, the trial Court, would be required to find out whether the construction claimed by the plaintiffs-respondents on the land in dispute having constructed more than 35 years ago, the onus of issue No. 1, is on the plaintiff whereas the onus of issue No.

6, is on the defendant. In order to decide issue No. 6, the trial Court is also required to find out whether the plaintiffs have raised construction over the land belonging to the defendant-petitioner. The examination of an Expert regarding the age of the construction or regarding the area in which the construction has been raised cannot be prohibited as the said evidence would be unnecessary for the adjudication of the matter.

6. Taking into consideration, the nature of the pleadings which have been mentioned hereinabove, the initial onus to seek injunction appears to lie on the plaintiff but in view of the specific plea taken by the defendant-petitioner, the onus would shift to the defendant to establish that the plaintiffs have encroached upon the land of the defendant-petitioner.

7. In view of above said circumstances, the trial Court seems to have committed no illegality in permitting the plaintiff to produce the evidence of Expert irrespective of the stage of the trial. It is not a case where a witness has been permitted to be produced by the plaintiff in rebuttal evidence without there being any rebuttal issue existing on the record. The facts and circumstances of each case are to be seen while permitting the production of evidence in rebuttal or production of additional evidence. The order passed by the trial Court is affirmed though for different reasons.

8. Counsel for the defendant-petitioner has also drawn attention of this Court to the pleadings of the plaintiffs-respondents, where the plaintiffs-respondents in their plaint have submitted that in case they are found to have raised construction on the land of the defendant, they would be entitled to the ownership as they have become owner by adverse possession. It will be pre-mature to express any opinion on the said plea. Whether the said plea is available to the plaintiffs has to be adjudicated upon by the trial Court in accordance with law applicable in such circumstances. I have also considered the contention of the learned counsel for the petitioner that the plaintiffs wants to delay the proceedings as in the matter of Hari Singh, earlier the controversy stands finally decided. Again no opinion is expressed on the said plea of the defendant-petitioner. However, the trial Court shall make earnest endeavour to expeditiously dispose of the trial. In case at any stage, the trial Court feels that the proceedings are being delayed by any act of the plaintiffs-respondents, it will be open to the trial Court to close the evidence of the plaintiffs by order.

No ground is made out for interference in the impugned order dated 10.3.2012.

Dismissed.