

## Vinay Kumar Mahajan Vs Harjeet Singh

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 5, 2016

**Acts Referred:** Civil Procedure Code, 1908 (CPC) - Order 15 Rule 15

**Citation:** (2016) 2 LAR 564

**Hon'ble Judges:** Rekha Mittal, J.

**Bench:** Single Bench

**Advocate:** Mr. H.S. Bhullar, Advocate, for the Petitioner; Mr. Yogesh K. Puri for Mr. K.R. Dhawan, Advocates, for the Respondent No. 10

**Final Decision:** Dismissed

### Judgement

Rekha Mittal, J. - The present petition has been directed against the orders dated 15.5.2014 (Annexures P-1 and P-2) passed by the Civil

Judge (Junior Division), Chandigarh dismissing the applications filed by the petitioner for framing of additional issue and permission to lead

evidence in rebuttal.

2. Counsel for the petitioner would contend that Ms. Jyoti Chopra (since deceased) filed a suit for declaration that the purported sale agreement,

general power of attorney, Will, indemnity bond and affidavit alleged to be executed on 3.9.2004 by the plaintiff in favour of Harjeet Singh

defendant No. 1 qua house No. 1012, Sector 19-B, Chandigarh are illegal, unlawful, null and void and are the result of fraud and

misrepresentation and thus not binding on rights of the plaintiff in the said house. It has been pleaded in para 18 of the plaint that when the plaintiff

came to know about forgery and other acts of fraud and cheating etc., she immediately got cancelled the general power of attorney and Will on

13.10.2004 and she also informed defendant No. 1 through registered post on 1.11.2004 qua cancellation which was duly received by him on

2.11.2004. It is argued that though the Court framed an issue "whether agreement to sell, general power of attorney, Will, indemnity bond and

affidavit dated 3.9.2004 in favour of defendant No. 1 are the result of fraud and misrepresentation and are illegal, null and void" but the court has

not framed an issue with regard to cancellation of these documents which is material and necessary for adjudication of the suit. It is further argued

that in view of pleadings of the parties, a specific issue is required to be framed on the question of cancellation of the agreement and Will but the

learned trial court wrongly and illegally dismissed the application in this regard.

3. To assail second order dated 15.5.2014 whereby application for adducing evidence in rebuttal has been dismissed and the petitioner has not

been permitted to tender his affidavit accompanied by documents in rebuttal, counsel has submitted that as the trial court has framed issued No. 8

namely "whether the plaintiff is estopped by her acts and conduct to challenge the documents which she has voluntarily executed", the onus

whereof has been placed upon the respondent/defendant No. 1, the petitioner is entitled to lead evidence in rebuttal to counter evidence adduced

by the defendants.

4. Counsel for the contesting respondent has supported the impugned orders with the submissions that the application for framing of additional

issue as well as leading evidence in rebuttal is a clever attempt on the part of the petitioner to adduce evidence which was required to be led at the

stage of leading evidence in affirmative by the petitioner. It is further argued that once the petitioner had opened her case in view of allegations

raised in the plaint and written statement and issues framed for determination and never reserved her right to lead evidence in rebuttal, the learned

trial court has rightly dismissed the application for adducing evidence in rebuttal more particularly in the circumstances that the petitioner has

already examined himself and the documents sought to be produced by way of rebuttal pertain to the year 2004, thus, already in existence at the

time of filing of the suit and adducing evidence in affirmative.

5. I have heard counsel for the parties, perused the paper book and record of the civil suit pending before the trial court.

6. Before dealing with the submissions made by counsel for the parties, it is appropriate to note that the suit was instituted by Ms. Jyoti Chopra on

18.3.2005. On completion of pleadings of the parties, issues were framed on 01.11.2006. Thereafter, the case remained pending for evidence of

the plaintiff as well as for certain other purposes due to filing of interlocutory applications till 4.2.2014. During this period of about 9 years, the

plaintiff examined several witnesses but never pressed for framing of additional issue qua cancellation of the Will and agreement to sell or intimation

regarding cancellation to the defendant. As a matter of fact, the factum of cancellation of agreement to sell and Will or/and intimation thereof to the

defendant is relevant in the context of plea of the plaintiff that the documents in question are the result of fraud and misrepresentation and therefore,

liable to be set aside. It appears that since the plaintiff did not adduce evidence in regard to cancellation of the documents or intimation to the

defendant in regard thereof at an appropriate stage of the proceedings, the application was filed to frame an additional issue with a mala fide design

to seek an opportunity to adduce evidence knowing fully well that the petitioner may not be allowed to adduce that evidence by way of additional

evidence, keeping in view the number of years and umpteen number of opportunities already availed of by the plaintiff in concluding her evidence

coupled with the factum that the documents sought to be produced and proved were already in existence in the year 2004. As per settled position

in law, a person who approaches the Court with a mala fide intention is not entitled to seek indulgence of the Court in exercise of discretionary

jurisdiction of the Court. This apart, as the trial court has already framed two issues with issue No. 1, the onus whereof has been placed upon the

plaintiff and issue No. 8 which is virtually a rebuttal of issue No. 1, the onus of which has been placed upon the defendants, there is no requirement

to frame an additional issue as has been prayed for. In this view of the matter, I do not find any error much less illegality in the impugned order

dismissing application for framing of additional issue.

7. So far as claim of the petitioner to adduce evidence in rebuttal, as the petitioner never reserved his right to lead evidence in rebuttal and the

evidence sought to be adduced by way of rebuttal is actually the evidence required to be adduced in affirmative, the learned trial court has rightly

dismissed claim of the petitioner by holding that the plaintiff wants to lead additional evidence by way of rebuttal evidence which is not permissible

in law. As has been noticed hereinbefore but at the cost of repetition, both the applications were filed by the petitioner with an ulterior motive to

seek adducing of additional evidence in the guise of framing additional issue or adducing evidence in rebuttal.

8. In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed leaving the parties to bear their

own costs.