

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.2973 of 2014
Date of Decision-16.09.2016**

Kuljeet Singh ... Petitioner
Versus
Manohar Singh Gill and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner.

Mr. R.D. Bawa, Advocate
for respondents No.1 to 8.

Mr. Sandeep Jain, Advocate
for respondent No.15.

RAJ MOHAN SINGH, J.

[1]. Petitioner-defendant has assailed order dated 16.04.2014 passed by Additional Civil Judge (Senior Division), Batala vide which application for striking off the statement of PW Manmohan Singh Gill being beyond the scope of rebuttal evidence was dismissed.

[2]. Plaintiff-Dharam Singh predecessor-in-interest of respondents No.1 to 8 filed a suit for declaration to the effect that the plaintiff and defendant No.3 Smt. Amar Kaur were the owners i.e. co-sharers of land to the extent of 1/3rd share i.e. plaintiff was owner of 1/6th share and defendant No.3 was owner of 1/6th share of total land measuring 111 kanals, 10 marlas situated in village Punder, Tehsil Batala.

[3]. Plaintiff claimed that Wadhawa Singh was the original owner of the land. He had two wives namely Inder Kaur and Aash Kaur. From the wedlock of Wadhawa Singh with Aash Kaur, plaintiff, defendant No.3-Amar Kaur, Amar Singh (deceased), Sohan Singh (deceased) and Laxman Singh (deceased) took birth. From the wedlock of Wadhawa Singh and Inder Kaur, Gurmukh Singh, Harnam Singh, Dalip Singh and Kartar Kaur took birth. Harnam Singh died long back leaving behind Smt. Surjit Kaur as his widow who was his class-I heir under Hindu Succession Act and succeeded $1/3^{\text{rd}}$ share in the land and remaining $2/3^{\text{rd}}$ share belonged to Gurmukh Singh and Dalip Singh.

[4]. Plaintiff claimed that Surjit Kaur died on 30.03.1999 leaving behind the plaintiff and defendant No.3 the only legal heirs who will succeeded her estate being legal heirs of Harnam Singh to whom the property deemed to have reverted back on the death of Surjit Kaur. Plaintiff and defendant No.3 being brother and sister of Harnam Singh from the half blood, inherited his estate since the brothers and sisters of Harnam Singh from the full blood had already expired long back and there being no class-II heir from the full blood, therefore, plaintiff and defendant No.3 were entitled to succeed the estate of Harnam Singh on being reverted back to them after the death of Surjit Kaur.

[5]. There were two sets of defendants in the suit. Defendants No.1 and 2 on the one hand as defendants No.3 and 4

were already proceeded against ex parte. The second set of defendants was consisting of defendants No.5 and 6 who were sons of Kartar Kaur sister of Harnam Singh. First set of defendants relied upon Will dated 15.12.1998 executed by Surjit Kaur widow of Harnam Singh in their favour. Second set of defendants i.e. Iqbal Singh and Balwinder Singh sons of Kartar Kaur relied upon Will dated 11.02.1994 in favour of Gurmukh Singh, Dalip Singh and Kartar Kaur. Both the sets of defendants filed written statement on the basis of their respective entitlements arising from the aforesaid will. Second set i.e. defendants No.5 and 6 also filed counter claim on the basis of Will.

[6]. Issues were framed on 06.11.2004. However the same were re-casted vide order 22.08.2005. On re-cast, following issues came to fore:-

*“1. Whether plaintiff is entitled for declaration to the effect that the plaintiff and defendant No.3 are owners/co-sharers to the extent of 1/3 share each?
OPP*

2. Whether the plaintiff is entitled for consequential relief of joint possession of the suit land? OPP

*3. Whether Smt. Surjit Kaur executed a Will dated 15.12.1998 in favour of defendant No.1 and 2?
OPD*

4. Whether Harnam Singh executed a valid Will dated 11.02.1994 in favour of Gurmukh Singh,

Dalip Singh and Mohinder Kaur as alleged. If so, its effect? OPD-5 & 6

5. If the above stated issue is proved where the defendants No.1, 2, 5 and 6 have become the owners of the suit land as alleged? OPD-5 & 6.

6. Whether the defendant Nos.5 & 6 are entitled to a decree for joint possession by way of counter claim as alleged? OPD 5 & 6.

7. Relief.”

[7]. Evidence of the plaintiff was closed on 20.09.2005 inaffirmative. The case was adjourned for 24.10.2005 for evidence of the defendants. Evidence of the defendants was also closed on 03.02.2014 qua defendants No.1 and 2.

[8]. On 11.02.2014, Two witnesses viz. PW 1 and PW 2 namely Sukhjinder Singh and Prem Singh Pathania were examined in rebuttal. Objections were raised by both the sets of defendants, but the same were not decided, nor the same are available on record as per the petitioner.

[9]. Firstly, defendants No.5 and 6 moved an application for striking evidence of PW1 and PW 2 in rebuttal and for de-exhibition of documents Exs.P1 to P6. The said application was dismissed by Additional Civil Judge (Senior Division), Batala vide order dated 20.03.2014 on the ground that the suit was filed by the plaintiff for seeking relief of declaration along with consequential relief of joint possession. Defendants No.5 and 6 filed their written statement

and counter claim seeking decree for joint possession to the extent of 1/3rd share in the land in question. After framing of issues, plaintiff closed the evidence in affirmative as the defendants set up a Will allegedly executed by Surjit Kaur in their favour. The evidence of the defendants was led before the evidence of the plaintiff being in counter claim, therefore when the defendants collected their evidence, plaintiff was held to be having right to produce witnesses in reply to counter claim as well as in rebuttal in the main case. On that premise, it was held that the evidence of PW 1 and PW 2 was not liable to be struck off in rebuttal and the application was dismissed.

[10]. Similarly, an application was filed by defendants No.1 and 2 for striking of the statements of PW Manmohan Singh Gill as the same was claimed to be beyond the scope of rebuttal evidence. The said application was contested by plaintiffs on the ground that the evidence is covered under the cumulative effect of issues No.1 to 6. Additional Civil Judge (Senior Division), Batala dismissed the application vide order dated 16.04.2014 on the ground that plea of defendants No.1 and 2 cannot be entertained inasmuch as that the suit was filed by plaintiff seeking relief of declaration along with consequential relief of joint possession wherein defendants No.5 and 6 have also filed a counter claim seeking decree for joint possession, therefore, plaintiffs, have right to rebut the evidence led by the defendants in counter claim. Therefore, affidavits of these witnesses cannot be said to be related to affirmative

evidence. On the said premise, application filed by defendants No.5 and 6 was already dismissed on 20.03.2014. The application filed by defendants No.1 and 2 was also dismissed on 16.04.2014 by Additional Civil Judge (Senior Judge), Batala. That is, how, the present civil revision petition came to be filed against the order dated 16.04.2014 passed by Additional Civil Judge (Senior Judge), Batala.

[11]. I have heard learned counsel for the parties.

[12]. Learned counsel for the petitioner contended that Manmohan Singh Gill is son of Dharam Singh-plaintiff and has appeared in rebuttal by way of tendering affidavit dated 31.03.2014. Against this affidavit, both the sets of defendants filed objections to the effect that affidavit may not be treated in rebuttal.

[13]. Four such like applications were filed by the defendants not to create evidence in rebuttal. Two applications were filed against PW 1 and PW 2 by both sets of defendants and two other applications were filed against affidavit of Manmohan Singh Gill. All the four applications were dismissed by the trial Court.

[14]. In the present revision petition, learned counsel for the petitioner contended that the plaintiff had not led any evidence in affirmative in respect of para Nos.1 and 2 of the plaint and therefore statements of PW 1 and PW 2 should not be read qua issues No.1 and 2. Learned counsel for the petitioner relied upon **Avtar Singh and another Vs. Baldev Singh and others, 2005(1) PLR 230** to

contend that plaintiff cannot be allowed to lead evidence in rebuttal in respect of issues, the onus of which was upon the plaintiff himself. No right was reserved to adduce evidence in rebuttal. The evidence sought to be led by PW 1 and PW 2 in rebuttal was in the nature of evidence which ought to have been led in affirmative.

[15]. On the other hand, learned counsel for the respondents submitted that issues No.3 and 4 are related to Wills. Issue No.5 is based on decision of issues No.1 to 4. Since the defendants-counter claimants led evidence for which plaintiff was entitled to rebut it, therefore, the rebuttal is the only form available to counter the claim led by counter claimants. The affidavit of Manmohan Singh Gill in the context of paras No.1 to 8 relates to history of the case. In para No.9 of the affidavit, reference of Will was made to the effect that Surjit Kaur never executed the Will in question. Para No.10 relates to coparcenary nature of property in India which was allotted to Wadhawa Singh in lieu of land left in Pakistan. The statement of PW 1 is in respect of land left in Pakistan. Mutation was sanctioned on the basis of Will. The pedigree table was part of mutation which could have been proved only by leading evidence in rebuttal. Relationship stands admitted in the mutation, therefore, issues No.1 to 4 were related issues and no such segregation viz. affirmative and rebuttal can be made. Similarly, statement of PW 2 was also on these very lines. At last, learned counsel for the respondents submitted that since the earlier application filed by defendants No.5 and 6 already stood dismissed vide order dated

20.03.2014 and it was noticed by the Court that the evidence of counter claimants was required to be rebutted by the plaintiff in reply thereto, therefore, the rebuttal is only form available to counter the claim led by counter claimants.

[16]. Having considered the aforesaid controversy, I find that though issues No.1 and 2 were in respect of title of ownership and possession of the plaintiff. Defendants No.5 and 6 set up a counter claim on the basis of Will dated 15.12.1998, therefore, title based on such counter claim has necessary nexus with the entitlement of the plaintiff along with defendant No.3 in respect of share of Harnam Singh. The evidence led by counter claimants in rebuttal and decisions on issues No.1 and 2 were to be treated cumulatively so as to decide issue No.5 which was totally dependent upon issues No.3 and 4. The affidavit filed by Manmohan Singh Gill relates to history of the case as well as reference of Will to the effect that Surjit Singh never executed the Will in question and the coparcenary nature of property which was originally allotted to Wandhawa Singh in lieu of property left in Pakistan and relationship has to be culled out by the Court from the pleadings and evidence to be led by the parties in respect of mutation based on Will. The pedigree table being part of the mutation which could have been only proved by evidence in rebuttal. Since the relationship between the parties already stood admitted in mutation, therefore, issues No.1, 2, 3 and 4 are so engrossed that their decision would be dependent upon inter se findings between them. Counter claimants

after leading evidence on issues No.3 and 4 would give definite right to the plaintiffs to rebut the same. Even though as per contention of learned counsel for the plaintiff-petitioner, no affirmative evidence was led in respect of issues No.1 and 2 of the plaint and right to rebut the evidence of the counter claimants under issues No.3 and 4 is inseparable. To counter the evidence of the defendants, the plaintiff has a right to rely upon the history of the case viz-a-viz the property to be coparcenary or not and the pedigree table which was part of mutation and the mutation itself being based on Will.

[17]. All these factors would cumulatively give right to the plaintiff to lead evidence in order to rebut the evidence of the counter claimants. Additional Civil Judge (Senior Division), Batala has already noticed in order dated 30.03.2014 that the evidence of the defendants was presented in the Court before the evidence of the plaintiff. The said observation in the context of the evidence of the counter claimants which was led before the evidence of the plaintiff because plaintiff was supposed to rebut the evidence of the counter claimants in the capacity of the defendants to the counter claim. In view of that it cannot be conclusively decided that the plaintiff wanted to lead evidence in rebuttal in respect of issues, the onus of which are exclusively upon the plaintiff. Keeping in view the nature of remaining issues framed and evidence required to prove the same and to counter the same, the examinations of PW 1 and

PW 2 and Manmohan Singh Gill would suffice to meet the requirement of law.

[18]. In view of aforesaid, I do not subscribe the arguments raised by the learned counsel for the petitioner and dismissed the revision petition being totally devoid of merits.

(RAJ MOHAN SINGH)
JUDGE

16.09.2016

Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No