

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3781 of 2015 (O&M)

Date of Decision: 11.05.2016

Smt. Nachhatar Kaur and Others

... Petitioner(s)

Versus

Harjinder Pal

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Gurvinder Singh, Advocate
for the petitioner(s).

Mr. Harjinder Pal, Advocate
for the respondent(s).

Shekher Dhawan, J.

CM-14121-CII-2015

Civil miscellaneous application is allowed and documents
(Annexures P4 & P5) are taken on record.

CR-3781-2015

Present petition under Article 227 of the Constitution of
India for setting aside order dated 27.4.2015, passed by learned
Additional Civil Judge (Senior Division), Ambala, whereby application

moved by the plaintiff seeking permission to examine Handwriting & Finger Prints Expert in his rebuttal evidence in order to compare the signatures and thumb impressions of defendant No.1 as contained in the gift deed with those contained in the agreement of sale, power of attorney and Will in question was allowed.

Relevant facts of the case that plaintiff had filed suit for recovery of ₹ 15,00,000/- on the ground that defendants entered into an agreement of sale with the plaintiff on 19.12.2008 in the presence of witnesses and also received a sum of ₹ 15,00,000/- and receipt thereof was also executed. As per plaintiff, defendants had executed registered general power of attorney in favour of the plaintiff on the same day. The defendants denied the execution of the agreement of sale and took specific plea that plaintiff had taken their signatures and thumb impressions on blank papers and stamp papers and got them photographed before the Sub Registrar. Plaintiff had filed separate application under Order 11 Rule 14 CPC for issuance of directions to the defendants to produce document No. 4888 dated 17.11.2003 executed by Ranjit Singh in favour of defendant No.1 which bears the thumb impression as well as signatures of defendant No.1 to enable the plaintiff to get the same compared from the Handwriting Expert. Defendants denied the custody and possession of the said document. As per plaintiff, since the gift deed is a duly registered document, therefore, he wanted to produce the same by way of secondary evidence and also wanted to get thumb impressions and signatures on

the said gift deed compared with the signatures and thumb impressions on the agreement of sale, power of attorney and Will already on the record. For that purpose, prayer was made for allowing the plaintiff to lead secondary evidence.

The said application was contested by the defendants on the ground that as per Order 18 Rule 3 CPC, plaintiff cannot lead such an evidence in rebuttal and plaintiff has no right to lead the additional evidence after conclusion of the evidence of both the parties.

The Court below, after hearing the parties, passed the order dated 27.4.2015, thereby allowing the plaintiff to produce certified copy of gift deed bearing No. 4888 dated 17.11.2003 in rebuttal evidence by way of secondary evidence. Plaintiff was also allowed to examine the Handwriting & Finger Prints Expert in his rebuttal evidence in order to compare the signatures and thumb impressions of defendant No.1 as contained in the said gift deed with those contained in the agreement of sale, power attorney and Will in question.

Learned counsel for the petitioners submitted that the Court below completely ignored the fact that allowing of such an application at the stage of rebuttal evidence and additional evidence is legally not permissible because application was moved by the plaintiff. The onus to prove the execution of agreement of sale was upon the plaintiff alone by leading affirmative evidence and such an evidence cannot be allowed by way of rebuttal evidence.

Learned counsel for the respondent, while controverting the plea taken by learned counsel for the petitioners, submitted that

petitioners had moved an application for allowing them to cross-examine Mani Jan, Handwriting & Finger Prints Expert, produced by the plaintiff as PW.6 and to review the order dated 3.8.2015. So, the petitioners cannot take the plea of challenging the impugned order and simultaneously continuing with the prayer before the Court below to allow them to cross-examine the expert witness.

Having considered the submissions made by learned counsel for the parties and perusal of the record of the case, this Court is of the considered view that plaintiff had filed main suit for recovery on the basis of agreement of sale allegedly executed by the defendants on 19.12.2008. The execution of said document was denied by the defendants and issues were framed by the Court below. The onus to prove the execution of agreement was upon the plaintiff and plaintiff as well as the defendants led their respective evidence. After conclusion of the evidence of both the parties, plaintiff could not be allowed to lead evidence in rebuttal.

The scope and ambit of the right of the plaintiff to lead evidence in rebuttal on issues, the onus of proof of which is on the plaintiff was considered by the Division Bench of this Court in ***Surjit Singh and Others v. Jagtar Singh and Others 2007(1) RCR (Civil) 537***, wherein it was observed as under:-

"In our opinion, Order 18 Rule 3 of the Civil Procedure Code would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an interpretation

would be to ignore a vital part of Order 18 Rule 3 of the CPC. The rule clearly postulates that "the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties". No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (supra) (AIR 1983 Punjab and Haryana 210). It has been held that if a statement is made by the Advocate for the plaintiff that "the plaintiff closes its evidence in the affirmative only," the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned Single Judge in the case of Kashmir Kaur, (2000(2) RCR(Civil) 133) (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur's

case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned Single Judge in the case of M/s Punjab Steel Corporation (2002(1) PLR 99) (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned Single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra) (AIR 1982 Punjab and Haryana 432)."

In terms of the aforesaid dictum, it is evident

that the plaintiffs- respondents cannot as a matter of right lead evidence in rebuttal on issues, the onus of proof of which is on them. The plaintiffs-respondents had concluded their evidence in the affirmative on 11.3.1998 and reserved their right to produce evidence in rebuttal. However, the onus to prove the memo of partition dated 12.5.1989 and the rapat roznamcha which was got entered with the Halqa Patwari on 29.7.1994 was on them (plaintiffs-respondents). Therefore, they could not examine the handwriting expert as a matter of right. Therefore, it is to be seen in the facts and circumstances of each case whether the plaintiffs can examine a handwriting expert in rebuttal. The ground for examination of the handwriting expert is that the defendant-Jagdev Singh while appearing in the witness box did not give clear answer as regards his signatures on the memo of partition dated 12.5.1989 and the rapat roznamcha which was got entered with the Halqa Patwari on 29.7.1994. In this regard, it is appropriate to note that it is for the plaintiffs to prove their case in accordance with law on the basis of evidence. The fact that Jagdev Singh in his cross-examination did not make clear the point as to whether the said documents bear his signatures would not per se entitle the plaintiffs to examine a handwriting expert in rebuttal although for not giving answers to the questions posed during cross-examination may entail the drawing of

an adverse inference for the purposes of appreciation of evidence. However, it would not give a right to the plaintiffs to make clear the point by producing a handwriting expert at that stage. In the circumstances, the learned trial Court while passing the impugned order has violated the procedure provided for leading evidence which has resulted in causing prejudice to the petitioners and would vitiate the impugned order.”

In view of above, plaintiff, after having availed sufficient opportunity to lead the evidence and closing the evidence in affirmative, cannot be allowed to cross-examine the Handwriting & Finger Prints Expert. A party, who has to prove the issue, cannot be allowed to lead evidence in rebuttal. This option either to examine or to cross-examine the Handwriting Expert was available with the plaintiff, at the time when it was leading his evidence in affirmative, cannot be allowed to be led at the stage of rebuttal by way of additional evidence. The Court below has completely ignored this legal proposition while passing the order under challenge.

As regard to plea taken by learned counsel for the respondent that petitioners had moved an application for allowing them to cross-examine the Handwriting Expert, that does not take away the legal right of the petitioners to challenge the order dated 27.4.2015 on legal grounds. In the given circumstances, petitioners were to contest their case and the only option available with them was to move an application for allowing them to examine the Handwriting Expert and

that was declined by the Court below vide order dated 20.11.2015. However, that does not affect the merits of the present revision petition in any manner or thereby does not provide a legal right to the respondent to allow him to lead evidence in rebuttal, which is otherwise not permissible as per law.

Consequently, present petition is accepted and the impugned order dated 27.4.2015 stands set aside being legally not sustainable.

(Shekher Dhawan)
Judge

May 11, 2016

"DK"