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

CR No. 1683 of 2018

Date of Decision: 15.05.2018

Bhajan Singh

....Petitioner

Vs

Gurjant Singh and others

.....Respondents

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

Present: Mr. Rishav Jain, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Perusal of the record would show that the suit was filed in the year 2009. Issues were framed in the year 2011. Plaintiff-petitioner has already closed his evidence without reserving any right to lead evidence in rebuttal. Thereafter, an application was filed for seeking permission to examine Khazan Singh, Ex-Sarpanch of the village as witness to prove signature of Gurdev Singh- attesting witness of Will dated 19.12.1978 as well as to prove death of both the witnesses of Will i.e. Gurdev Singh and Kartar Singh. None of the family members of aforesaid witnesses have been summoned or examined by the plaintiff-petitioner.

Respondent has contested the application by

submitting that family members of said witnesses have not been summoned and produced in the witness box because signatures of Gurdev Singh on the Will were forged and fabricated. The litigation has some prior history in civil and criminal background. Khazan Singh and his wife were convicted by Judicial Magistrate Ist Class, Sangrur under Section 138 of Negotiable Instruments Act on 27.11.2013. Appeal filed by them was also dismissed on 15.02.2016. A suit for recovery filed by defendant in a sum of Rs.9 lac against Khazan Singh was decreed on 27.11.2013. Appeal filed against the said judgment was also dismissed on 15.02.2016. The execution of said judgment is still pending. A case under Section 420 IPC was registered against Khazan Singh at the instance of defendant. Khazan Singh in the said litigation with defendant has denied his signatures on the documents. The evidence which is now sought to be adduced is a part of affirmative evidence which the plaintiff-petitioner could not lead at the relevant time.

Apparently, no right was reserved to lead evidence in rebuttal. Plaintiff cannot lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself.

Reliance can be made to **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) P&H 537 (DB); Jagdev Singh and others vs. Darshan Singh and**

others, 2007(1) RCR (Civil) 794 (DB) and Avtar Singh vs. Baldev Singh, 2015(1) PLR 230.

Looking to the controversy and the legal position, prayer of the petitioner cannot be accepted.

Consequently, this petition is found to be devoid of merits and the same is accordingly, dismissed.

15.05.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No