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

CR No. 8623 of 2015

Date of Decision: 13.07.2018

Surinderjit Singh

....Petitioner

Vs

Jaswant Kaur Dhillon and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Malkeet Singh, Advocate,
for the petitioner.

Mr. G.S. Brar, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioner has challenged the order dated 06.11.2015 passed by Civil Judge (Junior Division), Phillaur vide which the application filed by the plaintiff to lead evidence in rebuttal was allowed.

2. Plaintiff filed a suit for declaration with consequential relief of permanent injunction to the effect that plaintiff is owner in possession of 1/6th share in the suit property. The judgment and decree dated 20.04.1981 and Will dated 05.06.1987 allegedly executed by Harbans Singh are claimed to be wrong, illegal, null and void. Plaintiff has challenged the Will.

3. Initially, there was no rebuttal issue framed by the

Court. Vide order dated 17.03.2015, additional issue No.3-A was framed to the following effect:-

“3-A. Whether Harbans Singh (now deceased) executed a legal and valid Will dated 05.06.1987 in favour of the defendants No.1 and 2? OPD.”

4. Perusal of order dated 17.03.2015 passed by Civil Judge (Junior Division), Phillaur would show that the evidence of defendants No.1 to 3 was closed on the same day.

5. At the time of closing evidence of the plaintiff on 11.03.2014, following order was passed by the trial Court:-

“Further cross-examination of PW2 Karamjit Singh recorded and counsel for plaintiff has suffered the statement that he has closed the evidence in affirmative. Now the case is adjourned to 25.03.2014 for entire evidence of the defendants.”

6. In photostat copy of the aforesaid order, the following words are in written form i.e. “in affirmative”. The aforesaid overwriting in the order stands duly affirmed in the statement of Mr. N.K. Gupta, Advocate for the plaintiff dated 22.12.2014 wherein the plaintiff had closed his evidence in affirmative only.

7. Since the plaintiff at the time of closing his evidence

had reserved his right to lead evidence in rebuttal, therefore, after closure of evidence of defendants No.1 to 3 on 17.03.2015, plaintiff has a right to lead evidence on the issue, the onus of which was on the defendants and the defendants have already closed their evidence. Plaintiff cannot lead evidence in rebuttal on the issue, the onus of which was on the plaintiff himself but in the instant case, additional issue No.3-A was framed on 17.03.2015 thereby putting the onus to prove the said issue on the defendants.

8. Since the plaintiff had already reserved his right to lead evidence in rebuttal, therefore, ratio decidendi of **Avtar Singh vs Baldev Singh, 2015(1) PLR 230** would apply.

9. For the reasons mentioned hereinabove, the statement of fact made on behalf of the petitioner on 05.02.2016 at the time of issuance of notice of motion is found to be incorrect.

10. In view of above, I find no reason to interfere in the impugned order.

11. This revision petition is accordingly, dismissed.

13.07.2018

Jyoti Yadav

**(RAJ MOHAN SINGH)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No