

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 917 of 2018**

1. Suresh Kumar, son of Sohan Lal Shukla, aged about 48 years,
2. Minor Akash, son of Suresh Kumar Shukla, aged about 17 years,
3. Minor Aman, son of Suresh Kumar Shukla, aged about 15 years,

Petitioners No. 2 & 3 are minor through legal guardian father namely Suresh Kumar Shukla, son of Sohan Lal Shukla,

All are resident of Krishna Nagar, Boriya Road, Near Shiv Temple, Santoshi Nagar, Raipur, District Raipur (C.G.)

----Petitioners/defendants

Versus

1. Ramsharan, son of Sohan Lal Shukla, aged about 73 years,
2. Ramesh, son of Sohan Lal Shukla, aged about 54 years,
3. Sanjay, son of Baldau Shukla, aged about 40 years,
4. Shekhar, son of Baldau Shukla, aged about 38 years,
5. Satish, son of Baldau Shukla, aged about 36 years,
6. Sangeeta, daughter of Baldau Shukla, aged about 43 years,
7. Sweta, daughter of Baldau Shukla, aged about 34 years,
8. Tarini, wife of Baldau Shukla, aged about 63 years,
9. Vijeta, daughter of Manharan Shukla, aged about 37 years,
10. Khushabu, daughter of Manharan Shukla, aged about 33 years,
11. Niharika, daughter of Manharan Shukla, aged about 29 years,
12. Maya, wife of Maharan Shukla, aged about 62 years,
13. Rajkumar, son of Champkeshwar, aged about 38 years,
14. Chanchal, daughter of Champkeshwar, aged about 35 years,
15. Rajeev, son of Champkeshwar, aged about 32 years,
16. Uttam, son of Champkeshwar, aged about 30 years,

17. Gunja, daughter of Champkeshwar, aged about 34 years,

18. Prashuti, wife of Champkeshar, aged about 60 years,

All are Agriculturist and resident of village Julum, Post Raipur, Tahsil and District Raipur (C.G.) **(Plaintiffs)**

19. Chameli, daughter of Sohan Lal Shukla, aged about 62 years, resident of Dongargaon, District Rajnandgaon (C.G.)

20. Shail, daughter of Sohan Lal Shukla, aged about 58 years, resident of Krishna Nagar, Boriya Road, Near Shiv Temple, Santoshi Nagar, Raipur, District Raipur (C.G.)

21. State of Chhattisgarh, through Collector, Mahasamund, District Mahasamund (C.G.) **(Defendants)**

---- Respondents

For Petitioners/defendants : Mr. A.P. Sharma, Advocate
For Respondents No. 1 to 18 : Mr. Rishikant Mahobia, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/01/2019

(1) By the impugned order dated 30.06.2018, plaintiffs' application under Order 18 Rule 3 of the Code of Civil Procedure (for short "CPC") has been allowed by the trial Court reserving right of the plaintiffs to adduce evidence on the question of Will after closure of the defendants' evidence.

(2) Learned counsel appearing for the petitioners/defendants would submit that the trial Court is absolutely unjustified in granting the application under Order 18 Rule 3 of the CPC filed by the plaintiffs and, therefore, the impugned order be set aside.

(3) On the other hand, learned counsel for respondents No. 1 to 18/plaintiffs would submit that the defendants have asserted the execution of Will by Radhabai in favour of defendants No. 1 to 5, as such, the burden lies on the defendants to prove execution and attestation of the will and, thereafter, the plaintiffs have a right to let in rebuttal

evidence on the question of Will and, therefore, the trial Court is absolutely justified in allowing the plaintiff's application, which does not call for any interference in the second appeal.

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) At this stage, it would be appropriate to notice under Order 18 Rule 3 of the CPC, which reads thus:-

“R.3. Evidence where several issues.- Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at this option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.”

(6) Under Rule 3 of Order 18 of the CPC, 'the party beginning' has an option to produce evidence at the outset or after hearing the other party. A careful reading of Order 18, Rule 3 of the Code of Civil Procedure also reveals that the option to reserve his right to let in rebuttal evidence is available to the plaintiff if only the plaintiff abstains from leading evidence on issue, where the burden of proof is on the defendant. The stage of exercising the option is when the opposite party begins his evidence.

(7) The High Court of Madhya Pradesh in the matter of Laxmi Narayan Vs. Baburam¹ has held as under :-

“7.....The expression of significant relevance in the fore-quoted provision is “may in its option, either produce his evidence on those issues or reserve it.” This gives the

¹AIR 1977 MP 191

party beginning a right to elect one out of the two courses open to him and to proceed according to that elected course. The following of a particular course is preceded by the act of electing that course. A man has to elect which way he has to go only when he is standing at the crossroad. So that is the point at which he has to elect. The upshot of this discussion is that the stage of election is preceded by the leading of evidence the natural consequence whereof is that the intimation of that election to the Court should also be at that stage, otherwise there is no meaning in it. The object behind intimation is that the other party must know it, so that he may have a fair opportunity to plan his evidence accordingly and cross-examination of opposite party's witnesses is one in that planning. The basic object of the rules of procedure is that each party must have a fair notice of the case of the other side and a fair notice of the case of the other side and a fair opportunity of meeting it. If the intimation is to be given after the closure of the evidence of the party beginning, the very fore-observed purpose of the intimation would be frustrated and the other party is likely to be prejudiced.

8. Thus, in the light of the foregoing discussion, in my opinion the stage when the party beginning the evidence has to apprise the Court of his election to reserve his rebuttal evidence is when he begins. In Civil Revn. No. 129 of 1968 decided on 23-10-1970 (Madh Pra) it has been held:-

“The party beginning must elect at the time of beginning whether it will produce evidence on all the issues, or only on those the burden of proving which rests on him and the reservation is allowed when the other party has closed his evidence.”

9. The rules of procedure are the handmaid of the administration of justice and, therefore, in the interest of justice

in the light of the circumstances of this case the plaintiff despite the fact that he did not intimate about his election at the stage of beginning of his evidence be permitted to lead evidence in rebuttal, but at least it should be ascertained whether he, in fact, reserved that evidence and did not lead his evidence on the issues in question

(8) Reverting to the facts of the present case in light of the above -cited judgment of the M.P. High Court, it is apparent the plaintiffs have already examined their witnesses and sought leave to reserve their right to adduce evidence on the question of Will as pleaded by the defendants and burden to prove the execution and attestation of Will is on the defendants and in that view of the matter the trial Court has rightly reserved option in favour of the plaintiffs to let in rebuttal evidence on the question of Will after defendants will adduce their evidence by allowing plaintiffs' application under Order 18 Rule 3 of the CPC, in which I do not find any illegality or perversity warranting interference under Article 227 of the Constitution of India.

(9) Accordingly, the writ petition, being devoid of merit, is liable to be and is hereby dismissed. No order as to cost(s).

(10) Copy of this order be sent to the trial Court for compliance and needful by E-mail/ / FAX.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

