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

**Civil Revision No.722 of 2015 (O&M)
Date of Decision: 05.04.2019**

**Kewal Krishan (deceased) through LRs
.....Petitioners**

Vs

**Raj Kishan and others
....Respondents**

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

Present: Mr. Vivek Goyal, Advocate
for the petitioners.

Mr. Amandeep Saini, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

CM No.17477-C-II of 2017

Prayer made in this application is for bringing on record the legal representatives of deceased/petitioner Kewal Krishan, who died on 03.02.2016.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Kewal Krishan as shown in para no.2 of the application are ordered to be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

Civil Revision No.722 of 2015 (O&M)

[1]. This revision petition has been preferred against the order dated 09.01.2015 passed by Civil Judge (Jr. Divn.) Kurukshetra, vide which the application under Order 18 Rule 3 read with Section 151 CPC for leading expert evidence to counter the evidence of the counter-claimants was dismissed.

[2]. Perusal of the record would show that the plaintiff filed a suit for declaration and partition of properties belonging to late Vishnu Dutt and also challenged the Will dated 01.12.1998 being forged and fraudulent. The defendants in their written statement set up a counter claim and relied upon the same Will and sought possession of the properties which were in possession of the plaintiff. The issues were framed on 15.01.2013. Though no specific issue regarding validity of Will was framed, nor the same pressed by the plaintiff. Issue No.1 was framed to the following effect:-

1. *“Whether the plaintiff is entitled to a decree for declaration as prayed for”. OPP*

[3]. The onus of aforesaid issue No.1 was on the plaintiff. The application for recasting of issues was dismissed on 13.08.2014. Perusal of the aforesaid issue would show that the plaintiff could succeed only after proving that the Will in question was forged and fabricated. Plaintiff could have led affirmative

evidence in view of the stand taken by the defendants in the written statement, endorsing the validity of Will, rather the counter-claim set up by the defendants rested on the validity of Will. Since the plaintiff has not laid challenge to the Will, therefore, onus to prove the Will to be forged and fabricated was on the plaintiff. The evidence of the plaintiff as well as defendants have already been concluded.

[4]. Defendants/counter-claimants have led evidence in the context of proving validity of Will. The examination of the Expert by the defendants/counter-claimants would not open floodgates for the plaintiff to lead evidence in rebuttal that too in the nature of expert evidence to counter the evidence of the defendants at the stage of rebuttal, particularly in view of the fact that the onus to prove the relevant issue was on the plaintiff himself. Plaintiff cannot take benefit of weakness of the defendants' case.

[5]. Defendants have examined Yashpal Chand Jain as DW-9 to prove the validity of Will Ex.D-6. The prayer for recasting of issues has already been declined. At this stage, parties to the */is* cannot agitate on the subject of recasting of issues. Issue No.1 as framed would obligate the plaintiff to lead evidence in affirmative to seek declaration as prayed for.

[6]. Learned counsel for the petitioner relied upon **Ranjit**

Singh vs. Mehfil Restaurant, 2008(1) R.C.R. (Civil) 768;
Kewal Singh vs. Jagjit Singh, 2007(4) R.C.R. (Civil) 631 and
Smt. Kalyani Borkotaky vs. Kamkhya Borthakur and other,
2011(4) R.C.R. (Civil) 772 in support of his submissions.

[7]. Perusal of the aforesaid precedents would show that they are not applicable to the facts of the instant case inasmuch as that the defendant led evidence on the issue the onus of which was on the defendant and thereafter liberty was given to the plaintiff to rebut the same. In the instant case, the onus was on the plaintiff himself to prove that the plaintiff is entitled for declaration as prayed in the suit. The application for recasting of the issues was dismissed by the trial Court and the said order has already attained finality. Secondly, no right was reserved by the plaintiff, nor any rebuttal issue was framed. Therefore, both the aforesaid fact would make the proposition distinct from the judgment in **Kewal Singh's** case (supra). Since no right was reserved and the nature of evidence that too in the nature of expert evidence cannot be allowed even as per the decision in **Smt. Kalyani Borkotaky's** case (supra).

[8]. On the other hand the facts of the case titled '**Radha Devi vs. Ram Gopal (since deceased) through his LRs and others', 2019(1) PLR 18**' applies to the facts of the present

case.

[9]. It is a settled principle of law in view of **Surjit Singh and others vs. Jagtar Singh and others, 207(1) R.C.R. (Civil) P&H 537 (DB); Jagdev Singh and others vs. Darshan Singh and others, 2007(1) R.C.R. (Civil) 794 (DB)** and **Avtar Singh vs. Baldev Singh, 2015(1) PLR 230 (DB)**, that the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself. Since the plaintiff did not lead any evidence in affirmative much less any Handwriting and Fingerprint Expert to prove the Will to be forged, nor any right was reserved to lead evidence in rebuttal at the time of closing of affirmative evidence, nor any rebuttal issue was framed, therefore, right to lead evidence in rebuttal stands forfeited in terms of Order 18 Rule 3 CPC.

[10]. For the reasons recorded hereinabove, I do not see any infirmity in the impugned order passed by the trial Court. This revision petition is accordingly dismissed.

April 05, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No