

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

CR No.9251 of 2018

Date of decision: 3rd March, 2020

Navdeep Kaur & others

... Petitioners

Versus

Gurcharan Kaur & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rajinder K. Singla, Advocate for the petitioners.

Mrs. Kulwant K. Kahlon, Advocate for respondent No.1.

None for respondent No.2.

FATEH DEEP SINGH, J.

This is a revision by petitioners Navdeep Kaur and others (then defendants) against Gurcharan Kaur (plaintiff before the trial Court) challenging an order dated 17.11.2018 (Annexure P7) of the Court of learned Civil Judge (Junior Division), Tohana whereby the application for leading additional evidence in rebuttal by the plaintiff stood allowed subject to payment of ₹2,000/- as costs.

Upon hearing Mr. Rajinder Kumar Singla, Advocate for the petitioners; Mrs. Kulwant Kaur Kahlon, Advocate representing respondent No.1 and perusing the records of the case.

The plaintiff (respondent herein) Gurcharan Kaur happens to be widowed mother of deceased Gurpreet Singh, the latter happens to be

husband of Navdeep Kaur and father of Har Roop Singh and Sursewak Singh (now petitioners). It is consequent upon the death of Gurpreet Singh on 23.02.2011 a dispute over the property between the family ensued whereby the mother of the deceased instituted suit for declaration to the effect that she is owner in possession of agricultural land detailed in the head note of the plaint by way of inheritance of her deceased son being class one heir under the Hindu Succession Act, 1956 to the extent of her share detailed therein.

It is by no means differed as to the inter-se relationship of deceased Gurpreet Singh with the parties to this *lis* and the fact that he was owner in possession of the land detailed in the suit. It is during the dispute by way of suit, the defendants had set up a Will alleged to have been executed on 06.02.2011 by the deceased and got registered on 11.11.2011, whereby the defendants claim to have been the beneficiaries of the Will and thus, owners in possession. On the other hand, the plaintiff mother disputed the due execution of the Will and termed it to be a false and fictitious document. It was during the stage of rebuttal evidence, the plaintiff mother moved an application for additional evidence to enable her to examine the in-charge of Bharat Sanchar Nigam Limited (BSNL), Tohana tenant in the premises owned by Kartar Singh deceased husband of the plaintiff and father of the deceased Gurpreet Singh, which has devolved upon Gurpreet Singh whereby the building

under the tenancy of BSNL stood transferred in the name of Gurpreet Singh (now deceased) and wanted to get compared signatures on the Will with the signatures on the said transfer of the property in favour of Gurpreet Singh under lease with BSNL. The plaintiff further wanted to examine the signatures on two sale deeds both dated 23.10.2000 purported to have been made by Gurpreet Singh purchasing the agricultural land detailed therein. It is the claim of the plaintiff in her suit that she by virtue of being mother has inherited the estate of her deceased son in accordance with the Hindu law of succession whereas the defendants widow and the children of deceased Gurpreet Singh claim that on the basis of the Will they have been bequeathed the property of the deceased. Thus, at the very onset of their pleadings both, the plaintiff as well as the defendants, were fully aware as to the case of the other side regarding which issues by virtue of Order XIV CPC have been framed and the parties were led to trial on the basis of these issues.

To enliven his arguments, learned counsel for the petitioner Mr. Rajinder Kumar Singla, Advocate has placed reliance upon '**Avtar Singh & another vs. Baldev Singh & others**' (CR No.2203 of 2010 decided on 21.11.2014), whereas Mrs. Kulwant Kaur Kahlon, Advocate representing respondent No.1 seeks support from '**Kulwant Singh vs. Chand Singh etc.**' 2014(72) RCR (Civil) 245; '**Gurbaj Singh vs. Shameer Singh & others**' 2017(1) PLR 632; '**Naib Singh v. Hazura**

Singh & others’ 2015(1) ICC 519; ‘Manmohan Singh v. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur & others’ 2015(5) RCR (Civil) 661.

The parties having gone through the provisions of procedure prescribed by virtue of Order XI CPC as to discovery by interrogatories and discovery of documents, and further the provisions of Order XII CPC as to admissions and denial of the documents and did not ever bother to look into the case of the other side when it is well enunciated principle of law based on provisions of Order XV Rule 3 CPC that the Court is supposed to frame the issues on the basis of allegations of the parties made in their pleadings or in answer to interrogatories or the contents of the documents, and having gone through all these processes, aware of the case of the other side, did not bother to lead any evidence. It may not be out of context to refer here that though the provisions of Order XVIII Rule 17 CPC empower the Court at any stage to recall and examine any witness whose evidence it deems was essential for the judicious adjudication of the matter and would be required to clarify on certain issues but at the same time it is to be kept in mind that the same is not a provision to be used to fill in the omissions and lacuna in the case of a party. However, the provisions of Order XVIII Rule 17-A CPC, which was by way of additional evidence, stood deleted with effect from 01.07.2002 but over a period of time different interpretations have come

about and it does not mean that no evidence can be recalled at all after a party closes its evidence and rather deletion was with the sole motive to curb this misuse as a dilatory tactic. In the present case, the plaintiff though was fully aware of the contentious issue over the Will set up by the defendants, it was onerous task that lay upon her to have led the evidence to that effect to rebut the case of the defendants upon whom initially the onus laid to prove and establish the Will as it was the defendants who have propounded it. Though it is argued on behalf of the petitioners that having missed the bus, by resorting to a camouflage by bringing about such an evidence in rebuttal rather would be to undo the effects of her failure in doing so and thereby filling in the lacuna in the case of the plaintiff which is not permissible under the law. However, the same needs to be brushed aside in view of a Division Bench view of this Court in **‘Jaswant Kaur & another v. Devinder Singh’ AIR 1983 P&H 210 (DB)** upheld in a subsequent DB view of this Court in **‘Surjit Singh & others v. Jagtar Singh & others’ 2007 (1) RCR (Civil) P&H 537 (DB)** holding that where there are several issues and the burden of proof of some of which lies upon the defendant, plaintiff who is conscious of this lis and alive to the matter in issue can adduce evidence in entirety vis-à-vis all issues including those onus of proof of which is upon defendant or having led the evidence in affirmative as regards the issues, the onus of proof of which is upon the plaintiff himself he can

reserve his right to lead it in one go qua all the issues and close his evidence or reserve his right to lead rebuttal evidence. Moreover, no prejudice is likely to be caused to the petitioners if opportunity is granted to the plaintiff to lead additional evidence in rebuttal and is not contrary to the requirements of law and dispensation of justice. There appears to be no illegality or perversity in the impugned findings. As such, the revision petition stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 3, 2020

rps

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