

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

**Civil Revision No.1233 of 2017 (O&M)
Date of Decision: 25-04-2022**

Munshi Ram & Others

...Revisionists-Petitioners

Versus

Sushil Chand & Others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Jatin Hans, Advocate,
for the revisionists-petitioners.

Mr. Anurag Jain, Advocate along-with
Ms. Kanupriya, Advocate,
for respondent No.10.

Respondents No.1 to 9 already proceeded against ex parte
and Service of notice upon respondent No.11 dispensed
with vide the order dated 16.05.2018.

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MEENAKSHI I. MEHTA, J.

By way of the present revision petition, the petitioners-
Plaintiffs No.1, 2, 4 & 5 have laid challenge to the order dated
20.01.2017 (Annexure P-1) passed by the Civil Judge (Junior
Division) Bhiwani (for short 'the trial Court') whereby the application
(Annexure P-4) moved by them as well as proforma-respondents
No.12 to 14-Plaintiffs No.3, 6 & 7 for seeking permission to examine
petitioner No.4-plaintiff Hawa Singh as witness in their rebuttal
evidence, has been dismissed.

Shorn and short of unnecessary details, the facts leading
to the filing of the present revision petition, are that the plaintiffs filed
a Civil Suit against respondents No.1 to 11 (for short 'the defendants')

for seeking a decree for declaration to the effect that they were in cultivating possession over the suit land as '*gair mourusi*' tenants since the time of their fore-fathers and they also prayed for the relief of permanent injunction to restrain the defendants from interfering in their lawful possession over the said land. After the filing of the written-statement by the defendants and the replication to the same by the plaintiffs, the trial Court put the parties to the trial by framing the issues on 05.02.2013 vide order Annexure P-6. The plaintiffs availed their right to begin with leading their evidence and after tendering the documents Exhibits P-1 to P-38, their counsel closed their evidence in affirmative vide statement Annexure P-2, while reserving their right to lead rebuttal evidence. The plaintiffs moved application Annexure P-4 for seeking permission to examine said Hawa Singh as witness in their rebuttal evidence and the same has been dismissed vide the impugned order.

I have heard learned counsel for the petitioners-plaintiffs as well as learned counsel for respondent-defendant No.10 in this petition and have also perused the file carefully.

Learned counsel for the petitioners-plaintiffs has contended that vide statement Annexure P-2, the counsel for the plaintiffs in the trial Court had closed their evidence in affirmative while reserving their right to lead evidence in rebuttal and therefore, the plaintiffs had every right to examine said Hawa Singh as witness in their rebuttal evidence but vide the impugned order, the trial Court has erroneously dismissed the application, as moved by them for this purpose and hence, the same is not legally sustainable and deserves to

be set aside. To buttress his contentions, he has placed reliance upon **Avtar Singh and another vs. Baldev Singh & others 2015 (5) RCR (Civil) 625 (DB)** and **Surinder Singh vs. Baljeet Kaur and Another Civil Revision No.5591 of 2019 Decided on 09.09.2019.**

Per-contra, learned counsel for respondent-defendant No.10 have argued that on the pretext of leading rebuttal evidence, the plaintiffs intended to fill up the lacunae in their case which was not permissible because even if the plaintiffs had reserved their right to lead rebuttal evidence, even then the same was to stay confined to the evidence to be led only in reply to the evidence adduced by the defendants on the issues which were required to be proved by them (defendants) and it being so, the instant revision petition be dismissed.

As per Annexure P-2, the counsel for the plaintiffs in the trial Court closed their evidence in affirmative on 04.10.2014 after tendering documents Exhibits P1 to P38 on the record. The trial Court has categorically observed in Para No.8 of the impugned order Annexure P-1 that the plaintiffs availed six (06) effective opportunities to conclude their evidence and on 20.02.2015, the case was fixed for the evidence of the defendants and the plaintiffs moved an application for seeking permission to examine said Hawa Singh as witness in their additional evidence which was dismissed vide order dated 14.05.2015 and the revision petition filed by them to assail the said order, had also been dismissed by this Court vide the order dated 10.07.2015. It has also been mentioned in the same para that the evidence of the defendants was closed on 11.12.2015 but on 19.02.2016, the plaintiffs moved an application for framing the additional issue and the same

was allowed vide order dated 22.03.2016 while observing that no opportunity would be provided to either of the parties to adduce the evidence qua this additional issue and then, the plaintiffs moved an application for seeking review of the said order but the same was also dismissed on 28.07.2016 and thereafter, on 09.08.2016, the plaintiffs moved the application for examining the above-named witness in their rebuttal evidence.

From the above-discussed facts as narrated by the trial Court in the impugned order, it becomes quite clear that initially, the plaintiffs intended to examine said Hawa Singh as witness in their additional evidence but after the dismissal of the application moved by them in this regard, vide the order dated 14.05.2015 as well as the dismissal of the revision petition preferred by them to assail the said order, by this Court on 10.07.2015, they have moved the application to examine the same person in their rebuttal evidence. These circumstances speak volumes of the fact that the plaintiffs have left no stone unturned to fill up the lacunae in their affirmative evidence and now, under the garb of seeking permission to examine the said plaintiff as witness in their rebuttal evidence, they have made another attempt for this purpose which is not permissible.

The observations made by the Division Bench of this Court in **Avtar Singh and another(supra)**, do not further the cause of the plaintiffs in this petition because while answering a reference in the above-cited case, the Division Bench has expressed its complete agreement with the principle of law enunciated in **Surjit Singh and Others vs. Jagtar Singh and Others 2007(1) RCR (Civil) 537** and

Smt. Jaswant Kaur vs. Devinder Singh A.I.R 1982 P&H (DB) and has observed that “*the principle of law that has been enunciated is that the plaintiff has the option to lead his entire evidence on all the issues, and in case he intends to lead rebuttal evidence or answer the evidence that is to be led by the defendant, as regards the issues the onus of proof of which is upon the defendant, he shall have to reserve his right*”. In **Surjit Singh and Others (supra)**, the Division Bench of this Court, while agreeing with the verdict as rendered in **Jaswant Kaur (supra)**, has categorically observed that “*Order 18 Rule 3 of the CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff*”. The above-discussed observations clinch the entire controversy between the parties in this petition. The observations made by the Single Bench in **Surinder Singh (supra)** would also be of no avail to the plaintiffs as in the said case, the petitioner wanted to lead rebuttal evidence on the issue which was required to be proved by the defendant whereas, it is not so in this case.

As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the present revision petition, being *sans* any merit, stands dismissed.

25th April, 2022.
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes