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

-.-

CR-3327-2018 (O&M)

Date of Decision : 29.08.2022

Harbhajan Singh

....Petitioner

VERSUS

Darshan Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. O.P. Sharma, Advocate for the petitioner.

Mr. Aayush Gupta, Advocate, for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 16.04.2018 (Annexure P-5) whereby the Trial Court has allowed the application filed by the plaintiff-respondents for examining the handwriting and finger-print expert in rebuttal evidence.

The brief facts relevant to the present lis are that the plaintiff-respondents filed a suit for declaration to the effect that they are owners to the extent of 1/3rd share of the property in dispute as detailed in the head-note of the plaint as well as for permanent injunction and joint possession. In the suit, reliance was placed on a family settlement dated 21.02.1996. In the written statement filed by the defendants the said family settlement was specifically denied and it was stated that the same is a concocted one. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
3. Whether the plaintiff is entitled to the relief of joint possession as prayed for ? OPP
4. Whether the plaintiff has no locus standi to file the suit ? OPP
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPP
6. Whether the suit of the plaintiff is not maintainable ? OPP
7. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts ? OPP
8. Relief.

The onus of all the issues as framed was on the plaintiff-respondents. The plaintiff-respondents led their evidence in the affirmative and thereafter closed their evidence on 02.02.2012. Thereafter, the defendants also led their evidence and closed the same on 27.07.2016. On 15.03.2017 an application was filed by the plaintiff-respondents seeking permission to take photographs of the disputed and standard signatures of Harbhajan Singh. The application reads as under :

“Subject:- Seeking permission to take the photographs of the disputed and standard signatures of Harbhajan Singh.

Sir,

With due respect, above mentioned case is fixed before this Hon'ble Court for today i.e. 15/03/2007. To enlighten the facts regarding the case, we want to examine an hand writing & finger-prints expert Sh. Kranti Sharma, Hoshiarpur. Kindly allow him to take the photographs of disputed and standard signatures of Harbhajan Singh."

The application was contested by the defendant-petitioner. The said application cannot be allowed by the Trial Court vide the impugned order dated 16.04.2018. Hence, the present revision petition.

Learned counsel for the defendant-petitioner would contend that the respondent-plaintiffs in their plaint has specifically relied upon the family settlement dated 21.02.1996, the said family settlement was specifically denied in the written statement and it was further stated that the said family settlement is a concocted one. Learned counsel would further contend that the onus to prove all issues was cast upon the plaintiff-respondents. Issue No.1 was whether the plaintiff is entitled to declaration as prayed for. Having led his evidence in the affirmative, the respondent-plaintiffs sought to lead evidence in rebuttal which could not have been permitted in view of the Division Bench decisions in **Surjit Singh & Ors. vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** and **Avtar Singh & Anr. vs. Baldev Singh & Ors. [2015 (5) RCR (Civil) 625]**.

Learned counsel for the defendant-petitioner would further contend that the onus of the issues having been cast upon the plaintiff-respondents, it was incumbent upon the plaintiff-respondents to have led their evidence in the affirmative and such evidence cannot be permitted to be

Per contra, learned counsel for the plaintiff-respondents has contended that since it is only the agreement which was denied however the signatures were not denied and it is only for the first time in the cross-examination that the signatures were denied and hence the necessity for filing the application.

Heard.

In the present case the plaintiff-respondents filed a suit for declaration specifically relying upon the family settlement dated 21.02.1996. In the written statement it was specifically stated that the said agreement was a concocted one and that there was no family settlement which had ever taken place. In fact the defendants had also filed an application for production of the original alleged family settlement dated 21.02.1996, however the plaintiff-respondents had taken a stand that the said family settlement was in possession of Swaran Singh, who is father of the defendant-petitioner. On the basis of pleadings of the parties a specific issue was framed and Issue No.1 is *“Whether the plaintiff is entitled to declaration as prayed for ? OPP”*. The onus to prove that they were entitled to the declaration on the basis of the alleged family settlement dated 21.02.1996 was cast upon the plaintiff-respondents. It was incumbent upon the plaintiff-respondents to lead evidence in the affirmative.

The plaintiff-respondents cannot lead evidence in rebuttal as a matter of right even on an issue onus of which was on the defendant. Qua the issue the onus of which is on the defendant, the plaintiff needs to reserve his rights to lead evidence in rebuttal. Qua issues the onus of which is on the plaintiff-respondents the evidence is to be led in affirmative and cannot be permitted to be led in rebuttal.

“15. In our opinion, Order 18 Rule 3 of the Civil Procedure Code 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. Accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 of the Civil Procedure Code. The rule clearly postulates that "the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties". No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (supra). It has been held that if a statement is made by the Advocate for the plaintiff that "the plaintiff closes its evidence in the affirmative only," the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned Single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in rebuttal as

a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur's case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned Single Judge in the case of M/s Punjab Steel Corporation (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned Single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra)."

“Provisions of Order 18 Rule 2(3) cannot be construed or constructed to mean that after defendant had rendered his response to the whole case, plaintiff could still have a right to lead evidence in rebuttal. Such an interpretation or construction of the provision would be distorting the provision beyond its content. This perception and understanding further finds complete resonance in the provision of Order 18 Rule 3 CPC, as only the said provision deals with a situation where there are several issues and the burden of proof some of which lies upon the defendant.”

The ratio of the decisions by the Division Bench in the cases of Surjit Singh (*supra*) and Avtar Singh (*supra*) are fully applicable to the present case.

The argument of learned counsel for the plaintiff-respondents that since only the document had been disputed and the signatures were never in dispute, cannot be accepted. A perusal of the written statement clearly reveals that a specific stand was taken by the defendants that there was no family settlement and that the alleged settlement was a concocted one. Once the very document was disputed and it was stated to have been concocted, the question of any admission of signatures on the said document did not arise. That being so it cannot be said that the signatures have been denied for the first time in the cross-examination. Further, a perusal of the application which has been reproduced above clearly reveals that the same is totally bereft of any details or any reasons whatsoever. In fact the application has been filed as if it is a matter of right to lead the evidence in rebuttal. It does not even so much as mentions the document of which the permission is

being sought to take photographs of the disputed signatures.

The judgment relied upon by the learned counsel for the plaintiff-respondents in the case of **Karanjeet Singh Vs. Amarpreet Singh [2018 (3) PLR 71]** would not be applicable inasmuch as the facts of the said case are distinguishable.

In view of the above and in view of the law laid down as discussed above, the present revision petition is allowed, the impugned order dated 16.04.2018 (Annexure P-5) stands set aside and the application Annexure P-3 filed by the plaintiff-respondents stands dismissed. Pending applications, if any, also stand disposed off.

August 29, 2022
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(ALKA SARIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No