

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7674-2015 (O&M)
Date of decision: 14.07.2022

Santosh Devi

... Petitioner

Vs.

Rajbir and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 05.10.2015 passed by the Civil Judge (Jr. Divn.), Gurugram, vide which the application filed by the petitioner-defendant No.2 that respondent No.1-plaintiff has no right to lead rebuttal evidence qua taking the photograph of the disputed document Ex.D1 dated 20.10.1993 and getting the specimen signature tallied and compared by a handwriting expert, was dismissed.

Brief facts of the case are that respondent No.1-plaintiff filed a suit seeking partition of the suit property. In the suit, it is stated that by way of some oral settlement, the suit property was amicably partitioned in a family arrangement and description of the property in possession of plaintiff as well as

defendants is given in the suit itself. Petitioner-defendant No.2 filed written statement and contested the same on the ground that as per partition between Subram and Rajbir dated 20.10.1993, the suit property stands partitioned. It appears that since an oral partition set up by the plaintiff and the partition deed dated 20.10.1993 (in writing) set up by the defendants is at variance

In terms of the pleading of parties, following issues were framed: -

1. Whether the plaintiff is entitled for decree for the partition of the suit property as prayed for? OPP
2. Whether the plaintiff has no cause of action to file the present suit? OPD
3. Whether the suit is not maintainable? OPD
4. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties as alleged? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the plaintiff has concealed the true and material facts from the Hon'ble Court? OPD
7. Whether the plaintiff has not paid the appropriate court fee on the plaint? OPD
8. Relief.

The parties, in respect of the issues framed, led their respective evidence.

On 31.03.2015, counsel for the plaintiff closed the plaintiff's evidence by making the following statement: -

“Stated that I close the evidence of plaintiff in affirmative”

Thereafter, defendants led the evidence on the issues, onus of which was on the petitioner-defendant. At the stage, when evidence of the defendant was closed and the case was fixed for rebuttal evidence. Respondent No.1-plaintiff wanted to examine a handwriting expert to compare the signature on the document Ex.D1 dated 20.10.1993, according to which, partition took place between the parties with the standard signatures. The petitioner-defendant No.2 moved application (Annexure P-3) on the ground that no issue regarding partition deed dated 20.10.1993 Ex.D1 has been framed by the Civil Court, therefore, the plaintiff has no right to examine the handwriting expert by way of rebuttal evidence. The respondent No.1-plaintiff contested the application by way of filing reply and stated that in fact, document Ex.D1 is a forged document prepared by the defendants only to grab his valuable property, thereafter, he has a right to lead rebuttal evidence.

The Civil Court, vide impugned order dated 05.10.2015, dismissed the application. The operative part of the order reads as under: -

“4. I have heard the contentions of ld. counsels for both the parties and have gone through the case file carefully and minutely. I am of the considered view that the ld. Counsel for the applicant has taken the objection for the examining the expert witness to prove the disputed signature on the partition deed dated 20.10.1993. Ld. Counsel has taken the plea that the respondent has not reserved his right while closing the evidence in affirmative to lead the evidence in rebuttal. So, he cannot be allowed to lead evidence in

*rebuttal now on an issue the onus of which was upon the plaintiff. Ld. Counsel for the applicant placed reliance upon the decision of **Mohan Pal Singh and another Vs. Karampal Singh and another, 2010(4) RCR (Civil) 627 (P&H) and Surjit Singh and others Vs. Jagtar Singh and other, 2007(1) RCR (Civil), 537 (P&H)** but this plea of the respondent is not tenable. In the present case, the respondent in his plaint has alleged that the suit property is not partitioned and filed the present suit seeking partition whereas the applicant has filed his written statement taking the plea that the suit property had already been partitioned on 20.10.1993 vide the partition deed. The applicant alleged that the onus was upon the respondent to prove that this document was forged one but respondent did not prove that and further he did not reserve his right to lead evidence in rebuttal while closing his evidence in affirmative. But it is pertinent to mention here that the onus was not upon the respondent but was upon the applicant to prove the partition deed. Ld. Counsel had alleged that no issue had been framed in this regard but perusal of the issues framed in the present case reveals that onus was placed upon the applicant to prove that the fact that the respondent had no cause of action for filing the present suit as the suit property had already been partitioned. To discharge his onus, ld. Counsel for the applicant examined the expert to prove partition deed. Now respondent has a right to rebut that evidence led by the applicant in rebuttal*

evidence. Hence, the present application moved by the applicant is dismissed and the respondent is allowed to take specimen signature through expert and get the expert examined. Now to come up on 13.10.2015 for taking specimen signature by the expert.”

Learned counsel for the petitioner submits that since petitioner-defendant No.2, at the time of closing the evidence, on 31.03.2015, had not reserved a right to lead rebuttal evidence qua the issues, onus of which was on the defendants, therefore, the trial Court has wrongly dismissed the application. He relied upon a Division Bench judgment of this Court in **Avtar Singh and another Vs. Baldev Singh and others, 2015 (5) RCR (Civil) 625**, in which it is held that if the plaintiff has failed to reserve the right, he cannot lead the rebuttal evidence.

In reply, learned counsel for respondent No.1 has submitted that in fact, the plaintiff closed his evidence in affirmative, which implies that he has reserved a right to lead the rebuttal evidence, after closing of evidence of the defendants. With regard to issues framed by the trial Court, learned counsel has submitted that under issues No.2 & 3 regarding cause of action and non-maintainability of the suit, the defendants had set up a case by way of producing private partition deed dated 20.10.1993 Ex.D1, which is contrary to oral partition set up by plaintiff, therefore, the plaintiff has a right to lead the rebuttal evidence. He relied upon two Division Bench judgments of this Court in **Smt. Jaswant Kaur and anr. Vs. Devinder Singh and others, 1983 (2) RCR (Rent) 57** and **Surjit Singh and others Vs. Jagtar Singh and others,**

2007 (1) RCR (Civil) 537, to submit that both these judgments were considered by another Division Bench, while deciding **Avtar Singh**'s case (supra) and it has been observed that both these judgments lay down the correct law.

Learned counsel has further referred to provisions of Order 18 Rule 3 CPC with regard to procedure of examination of the witnesses and production of the evidence, to submit that the party beginning i.e. the plaintiff may begin and then reply generally on the whole case, after evidence of the defendant is closed. It is argued that where the evidence is on several issues, the burden of proving some of which lies on the other party, the party beginning may, at his 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 the 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, which is theme of Order 18 Rule 3 CPC.

It is submitted that in **Smt. Jaswant Kaur**'s case (supra), the Division Bench of this Court considered the following point: -

“What is the last stage for exercising the option to reserve the right of rebuttal to the evidence adduced by the other party under Order 18 Rule 3 is the core question in this set of five civil revisions which are before us on a reference.”

It is further submitted that after detailed discussion, the Division Bench concluded as under: -

“To conclude, I would hold on the language of O. 18, R. 3, C.P.C. on principle and on the weight of precedent, that the last stage for exercising the option to reserve the right of rebuttal can well be before the other party begins its evidence.

13. Before parting with this judgment, the modalities of reserving the right of rebuttal also calls for some comment. It appears to me that herein also an overly strict view is not to be taken. If it is possible to necessarily imply from the mode of reservation that the right of rebuttal has been retained, then it should not be negated, merely on the ground that it has not been so done in express terms. Cases where the party or its counsel makes the Statement that he close his evidence in the affirmative only, would inevitably imply that rebuttal evidence may well be led and consequently such right has been reserved.”

It is thus held by the Division Bench of this Court in **Smt. Jaswant Kaur’s** case (supra) that in cases, where the party or counsel make the statement that he closes the evidence in affirmative, would inevitably imply that rebuttal evidence may well be lead and secondly, right has been reserved. Similar view was taken in **Surjit Singh’s** case (supra).

Learned counsel for respondent No.1-plaintiff has submitted that in the application (Annexure P-3), petitioner-defendant No.2 herself mentioned that while closing the affirmative evidence, no right was reserved to lead the rebuttal evidence, therefore, no different interpretation of the statement made by counsel for the plaintiff on 31.03.2015 can be taken.

The point in controversy between learned counsel for the petitioner and learned counsel for respondent No.1 is with regard to interpretation of Division Bench judgment in **Avtar Singh's** case (supra). Learned counsel for the petitioner has submitted that it has been held that if the right is not reserved, the plaintiff may not have a right to rebut the evidence on the issue, onus of which was on the defendant, however, learned counsel for respondent No.1-plaintiff submits that in this judgment, Division Bench, once has upheld the view taken in earlier two judgments in **Smt. Jaswant Kaur's** case (supra) and **Surjit Singh's** case (supra), therefore, no different interpretation can be made as per arguments of learned counsel for the petitioner.

After hearing learned counsel for the parties, I find that while closing the evidence on 31.03.2015, the plaintiff closed the evidence in affirmative only, which interprets that as per Division Bench judgment in **Smt. Jaswant Kaur's** case (supra), he has reserved his right to lead rebuttal evidence.

Accordingly, finding no merit in the present petition, same is dismissed.

[**ARVIND SINGH SANGWAN**]
JUDGE

14.07.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No