

274

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

CR-4663-2018 (O&M)

Date of decision : 17.08.2022

Manju Rani

....Petitioner

Versus

Deepak Kumar Goyal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vivek Singla, Advocate for the petitioner.

None for respondent Nos.11 and 11(A).

Mr. Randeep Tanwar, Advocate for

Mr. Padamkant Dwivedi, Advocate for respondent No.16.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 14.05.2018 whereby the application filed by the petitioner for leading rebuttal evidence has been dismissed.

The brief facts relevant to the present lis are that the plaintiffs filed a suit for declaration to the effect that the plaintiffs are owners to the extent of 1/8th share each in the properties described in detail in the head note of the plaint. The defendant-respondents in their written statement set up a Will dated 25.09.1996. Initially issues were framed and the onus to prove the Will dated 25.09.1996 was cast upon the plaintiffs. However, subsequently vide order dated 29.03.2017 the onus was shifted on to the defendant-respondents who are the propounders of the Will. The plaintiff-petitioner led her evidence and on 29.03.2017 closed the evidence without

reserving any right to lead evidence in rebuttal. After the evidence was led by the defendant-respondents, an application was filed by the plaintiff-petitioner for leading evidence in rebuttal by calling an handwriting expert to compare the signatures of Manju Rani on the affidavits dated 30.11.2019, 04.12.2019 and 07.12.2019 and those of the Testator on the alleged Will dated 25.09.1996. The said application was contested and vide order dated 14.05.2018 the same came to be dismissed on the ground that at the time of closing her evidence the plaintiff-petitioner did not reserve any right to lead rebuttal evidence.

Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner only wants to lead evidence in order to rebut the evidence of the handwriting expert led by the defendant-respondents to prove the Will.

It is trite that a plaintiff cannot lead evidence in rebuttal as a matter of right on an issue the onus of which is on the defendant. The plaintiff has to reserve his right to lead evidence in rebuttal on such an issue the onus of which is on the defendant. In the present case admittedly the plaintiff-petitioner did not reserve this right while closing evidence.

In the case of **Surjit Singh & Ors. Vs. Jagtar Singh & Ors.** [2007(1) RCR (Civil) 537] it was inter alia held as under :

“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).”

In Avtar Singh & Anr. Vs. Baldev Singh & Ors. [2015 (5)

RCR (Civil) 625] it was inter-alia held that :

“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 plaintiff-petitioner who did not reserve her right to rebuttal cannot now be permitted to lead evidence of an handwriting expert by way of rebuttal evidence.

Resultantly, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The revision petition, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

August 17, 2022
tripti

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO