

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

CR-2501-2018 (O&M)
Date of decision : 24.01.2023

Sushil

... Petitioner(s)

Versus

Mohinder & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Ms. Sharmila Sharma, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 07.03.2018 (Annexure P-3) permitting the leading of evidence of a Handwriting Expert in rebuttal by the plaintiff-respondents.

Learned counsel for the defendant-petitioner would contend that in the present suit filed by the plaintiff-respondents for joint possession by way of declaration with consequential relief of permanent injunction, the plaintiff-respondents had relied upon a compromise. The defendant-petitioner, in the written statement, had denied that the document bears his signatures. It was also averred in the written statement that the signatures were forged with an intent to prepare a false document. The following issues were framed by the Court on 04.04.2016 and the onus of issue No.1 was cast

upon the plaintiff-respondents :

1. Whether the plaintiff is entitled to a decree for declaration in favour of the plaintiffs to the effect that the plaintiffs are owner in possession of the suit property mentioned in para nos.2 and 5b of the plaint, as prayed for ? OPP
2. Whether the plaintiffs are entitled for a decree of permanent injunction, as prayed for ? OPP
3. Whether the suit filed by the plaintiff are not maintainable in the present form ? OPD
4. Whether the plaintiffs have no cause of action and locus standi to file the present suit ? OPD
5. Whether the defendants are entitled to special cost u/s 35-A CPC ? OPD
6. Whether plaintiffs are estopped by their own act and conduct from filing the present suit ? OPD
7. Whether the plaintiffs have not come to the court with clean hands and suppressed the true and material facts from the court ? OPD
8. Whether the suit of the plaintiffs are not property valued for the purpose of court fee ? OPD
9. Relief.

The evidence of the plaintiff-respondents admittedly was closed by order. Learned counsel for the defendant-petitioner would further contend that since the signatures were denied at the outset in the written statement, it

was for the plaintiff-respondents to lead their evidence in the affirmative and

could not have led their evidence in rebuttal, in view of the judgment of the Division Bench of this Court in the case of **Surjit Singh & Ors. Vs. Jagtar Singh & Ors.** [2007 (1) RCR (Civil) 537].

Per contra, learned counsel for the plaintiff-respondents has contended that the defendant-petitioner, when he was being examined, had denied his signatures on the document and hence the plaintiff-respondents had led the evidence in rebuttal.

Heard.

The Division Bench of this Court in the case of **Surjit Singh** (supra) has 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 the present case the defendant-petitioner had specifically averred in the written statement that the document was forged and fabricated and that there was no compromise. The signatures were specifically denied. The onus to prove Issue No.1 i.e. *“Whether the plaintiff is entitled to a decree for declaration in favour of the plaintiffs to the effect that the plaintiffs are owner in possession of the suit property mentioned in paras.2 and 5b of the plaint, as prayed for ? OPP”* was on the plaintiff-respondents and it was incumbent for the plaintiff-respondents to have led their evidence in the affirmative. Not having led their evidence in the affirmative, in view of the law laid down in the case of **Surjit Singh** (supra), no evidence could have been permitted in rebuttal.

In view of the above, the impugned order dated 07.03.2018 (Annexure P-3) is set aside. The present revision petition is accordingly allowed. Pending applications, if any, also stand disposed off.

24.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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