

2023:PHHC:106586

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-4549-2018 (O&M)

Date of Decision: August 17, 2023

Jasmail Singh Sanghera

...Petitioner

Versus

Sohan Singh Sanghera and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Vaibhav Sehgal, Advocate  
for the petitioner.

Mr.Rajiv Joshi, Advocate  
for respondent No.1.

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**ARCHANA PURI, J.**

Through the present petition under Article 227 of the Constitution of India, the petitioner has invoked the jurisdiction of this Court to challenge the order dated 10.05.2018 (Annexure P-6) passed by learned Court below, in Civil Suit No.379 dated 18.10.2012, whereby, an application under Section 65 of the Indian Evidence Act, filed by the respondents has been allowed.

The facts, as culled out from the paperbook are that respondents No.1 to 4/plaintiffs had filed a suit for seeking declaration along with defendants No.1 (petitioner) and No.3, to be joint owners in joint possession

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of the land, as detailed in the head note of the plaint, copy whereof is Annexure P-1. Besides the same, another declaration was sought, thereby, challenging the legality and validity of the sale deed dated 24.05.2012, executed by petitioner (defendant No.1 before the lower Court), being the attorney of Lashkar Singh, in favour of defendant No.2 (his wife), who is respondent No.5 and also sought, relief of joint possession.

Issues were framed in the present case and the evidence of both the petitioner (defendant No.1) as well as respondents No.1 to 4 (plaintiffs) was recorded. When the case was at the stage of rebuttal evidence, an application was filed by the respondents-plaintiffs under Section 65 of the Indian Evidence Act, for allowing them to produce Will dated 31.01.1997, duly executed by Lashkar Singh, in favour of his sons-Sohan Singh (plaintiff No.1) and Jasmel Singh (defendant No.1), by way of secondary evidence. The said application was allowed vide impugned order dated 10.05.2018.

In this backdrop, the question, which is involved is whether respondents-plaintiffs could adduce evidence, by way of secondary evidence, qua the Will, which, as such, does not form the subject matter of the suit in hand.

Before proceeding further, it should be noted that respondents-plaintiffs had sought declaration, vis-a-vis, validity and legality of the sale deed, allegedly executed by the petitioner-defendant No.1, being attorney of Lashkar Singh. Copy of the plaint is coming on record. Perusal of the same reveals that the Will now intended to be produced, nowhere to be asserted/denied and as such, has no relevance to the lis. Perusal of the plaint

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reveals that it is affirmative case of the respondents-plaintiffs that Lashkar Singh neither appointed petitioner-defendant No.1 as his attorney nor received alleged consideration of the alleged sale deed dated 24.05.2012, which is now under challenge. Furthermore, in the plaint, it has also been asserted that Lashkar Singh was not on speaking terms with the petitioner as well as his wife and that petitioner-defendant No.1 and Lashkar Singh were involved in litigation with each other and therefore, question of appointing petitioner-defendant No.1 as attorney, by Lashkar Singh, during his life-time does not arise.

Such being the assertion, the contesting respondents-plaintiffs were clear about the legality and validity of the Will, having been challenged by them. Such being the position, it was required on the part of the respondents-plaintiffs to lead evidence, relating to this cropped controversy, at the stage, when they were to lead evidence in affirmative. However, respondents-plaintiffs did not lead any evidence. However, as evident, on 08.09.2015, counsel for the plaintiffs had given the statement, which reads as follows:-

*“I close my affirmative evidence after tendering copy of power of attorney Ex.P-9 (Objected to)”*

Copy of the said statement is annexed as Annexure P-3.

Though the question of Will, which is now intended to be proved by way of secondary evidence, is not the question to be adjudicated in the suit in hand, but however, it is asserted to be the Will of Lashkar Singh.

During the course of arguments, it is submitted by learned counsel for respondent No.1 that it was only to establish the fact that Lashkar Singh used to affix thumb impressions, upon the documents and he did not sign the attorney, as such. May it be so, that submission was made to this effect, but one thing becomes very evident that under the garb of proving of Will of Lashkar Singh, by way of secondary evidence, the respondents-plaintiffs intend to lead evidence, with regard to Power of Attorney to have never been executed by Lashkar Singh. Thus, under these circumstances, in a way, an attempt has been made to lead evidence with regard to validity of the questioned Power of Attorney, which evidence was required to be led in affirmative, in view of the pleaded case.

Considering the aforesaid, it was required on the part of the respondents-plaintiffs to prove the document, in accordance with law, at the time, when the respondents-plaintiffs were to lead evidence.

The scope and ambit of the right of the plaintiffs to lead evidence in rebuttal on issues, the onus of proof of which is on the plaintiffs, was considered by the Hon'ble Division Bench of this Court in ***Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537***, wherein, it was observed as herein given:-

*“In our opinion, 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. Accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 of the CPC. 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) 2000 (2) RCR (Civil) 133 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) 2002 (1) PLR 99. 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 terms of the aforesaid dictum, even further, the observation so made, were reiterated in ***Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794.*** In ***Avtar Singh and another vs. Baldev***

*Singh and others in CR-2203 of 2010 decided on 21.11.2014*, the question posed by the Hon'ble Division Bench of this Court, is as follows:-

*“Whether it is mandatory for the trial court to provide an opportunity to the plaintiff to lead evidence in rebuttal only in those cases where he had reserved his right of rebuttal?”*

While answering this question, it was observed as herein given:-

*“Division Bench of this court in Surjit Singh's case (supra), while relying upon a decision of an earlier Division Bench in Jaswant Kaur and another v. Devinder Singh, AIR 1983 P&H 210 (DB) and a Single Bench in National Fertilizers Ltd. v. Municipal Committee, Bhatinda and another, AIR 1982 P&H 432(1), crystallized the true import of the provisions of Order 18 Rule 3. And the principle of law that has been enunciated is that 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. Further, he shall have to exercise his option either when he closes his evidence in affirmative or in any case before the other party begins its evidence. But if he fails to reserve any such right, in terms of the provision of Order 18 Rule 3 CPC, his right to lead evidence in rebuttal would stand forfeited.”*

Now, adverting to the case in hand, it is pertinent to mention that it is not the Will, intended to be proved by way of secondary evidence, which forms the subject matter of the lis. In fact, Will is intended to be proved only to establish the assertion about Lashkar Singh to be affixing thumb impressions and not indulging in affixing signatures. However, this assertion now intended to be proved, forms the basis of the controversy, the onus of which issue, was upon the respondents-plaintiffs. Once the respondents-plaintiffs have exercised their right and the counsel made a statement, thereby, closing the evidence, while tendering the Power of

Attorney Ex.P9, now, at the stage of rebuttal evidence, respondents-plaintiffs cannot be allowed to lead evidence qua this issue, onus whereof, was upon them, under the garb of Will being proved by way of secondary evidence.

Though, learned counsel for respondent No.1-plaintiff relied upon *Jaswant Singh vs. Jagjit Singh, 2016 (3) PLR 15*, but however, with full regard, it is submitted that fact of the case under consideration are distinguishable from the present case, as in the case under consideration, the question qua document in question to be forged and fabricated was raised by the defendants. However, such is not the position in the present case.

Considering the aforesaid observations, under the garb of application under Section 65 of the Indian Evidence Act, for proving the Will by way of secondary evidence, when it has no relevance to the controversy in question, the respondents-plaintiffs cannot be allowed to lead evidence, vis-a-vis, the issues, onus whereof was upon them, at the stage of rebuttal evidence.

Consequently, the present revision petition is allowed and the impugned order dated 10.05.2018 passed by learned Court below is hereby set aside and resultantly, the application filed by the respondents-plaintiffs under Section 65 of the Indian Evidence Act, stands dismissed.

August 17, 2023  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No