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

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Reserved on: 04.09.2023

Pronounced on: 14.09.2023

Anjana

.....Petitioner

Versus

Rajinder Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. R.K. Bamal, Advocate,
for the petitioner.

Mr. Divanshu Jain, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. Instant revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 13.01.2023 (Annexure P-9) passed by the Court of learned Civil Judge (Junior Division), Chandigarh, whereby application filed by the plaintiff-petitioner under Order 18 Rule 3 read with Section 151 CPC for allowing her to lead further evidence after framing additional issue No.1-A, has been dismissed.

2. Brief facts relevant for disposal of the present revision petition are that petitioner along with her mother filed a suit for declaration to the effect that alleged transfer deed dated 13.03.2009 executed by defendant No.2 in favour of defendant No.1-respondent is

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null and void and is a result of fraud and undue influence having no effect on the rights of the plaintiffs and is liable to be set aside and the plaintiffs are entitled to 50% share in House No.2351, Sector 44-C, Chandigarh, and for permanent injunction restraining defendant No.1-respondent from alienating, transferring in any manner, to any person, the House No.2351, Sector 44-C, Chandigarh, and for restraining the defendant from forcible, illegally dispossessing and interfering in the peaceful possession of the plaintiffs of the said house. During the pendency of the suit plaintiff No.2 – Prem Lata and defendant No.2 – Hari Singh i.e. mother and father of plaintiff No.1 and defendant No.2 died and their names were deleted from the array of parties. From the pleadings of the parties, the trial Court framed the issues. On 11.11.2022, plaintiff-petitioner filed an application for framing of additional issue No.1-A. The application was allowed vide order dated 11.11.2022 and following additional issue No.1-A was framed by the Court: -

“Whether the transfer deed dated 09.03.2009 is legal and valid: OPD1”

On an application moved by the plaintiff-petitioner under Order 14 Rules 1, 3 and 5 read with Section 151 CPC for recasting of additional issue No.1-A, date of transfer deed in the additional issue No.1-A was corrected to 13.03.2009. On 21.11.2022 defendant-respondent examined himself as DW7 and witness of the transfer deed dated 13.03.2009 Mukesh Kundra, Advocate as DW8. On 05.01.2023 defendant-respondent closed his evidence and on the same date

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plaintiff-petitioner filed an application under Order 18 Rule 3 read with Section 151 CPC for rebuttal evidence. Defendant-respondent filed reply to the said application. Vide impugned order dated 13.01.2023 the trial Court dismissed the application of the plaintiff-petitioner.

3. Learned counsel for the petitioner contended that the trial Court has wrongly dismissed the application of the petitioner to lead rebuttal evidence on issue No.1. He further contended that petitioner never made any statement after framing of additional issue that she did not want to lead any evidence. He further contended that both the parties have legal right to produce their respective evidence on the said additional issue. He further contended that curtailing rights of the petitioner to lead further evidence after framing of additional issue is totally illegal and against the principles of natural justice. In support of his contentions, he has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Prem Chand and others v. Board of Revenue U.P. and others, 2008(10) SCC 533*** and judgments of this Court in ***Budh Singh v. Mohinder Kaur and others, 2018(5) R.C.R.(Civil) 779; Dharam Singh v. Labh Singh and others 2017(3) Law Herald 2257*** and ***Smt. Kanwaljit Kaur Bedi v. Paramjit Singh Sawhney and others, 2020(1) R.C.R.(Civil) 521.***

4. *Per contra*, learned counsel for the respondent supported the impugned order and contended that application of the petitioner has rightly been dismissed by the trial Court as they have already led their evidence in affirmative qua issue No.1. He further contends that petitioner has already been disowned by her father-Hari Singh vide

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public notice dated 12.12.2015 published in a leading newspaper and he has also filed a complaint against her before the police. In support of his contentions, learned counsel placed reliance on the judgments of this Court in *Surjit Singh and others v. Jagtar singh and other, 2007(1) R.C.R.(Civil) 537; Avtar Singh and another v. Baldev Singh and others, 2015(5) R.C.R.(Civil) 625; Rulda Singh v. Paramjit Singh, 2022(3) Law Herald 2551; National Fertilizers Ltd., Bhatinda v. Municipal Committee, Bhatinda and another, 1982 PLR 322 and Suresh Kumar and others v. Joginder Singh, 2012(2) R.C.R.(Civil) 129.*

5. I have heard learned counsel for the parties and perused the record.

6. Plaintiff-petitioner filed the suit for declaration that transfer deed dated 13.03.2009 executed by defendant No.2 in favour of defendant No.1 is illegal, null and void. On 14.03.2017 trial Court framed the issues. Issue No.1 is “*Whether the plaintiff is entitled for declaration as prayed for?*” and the onus to prove the said issue was upon the plaintiff, meaning thereby she had to lead evidence in affirmative on the said issue proving that transfer deed dated 13.03.2009 is illegal, null and void. Thereafter, additional issue No.1-A “*Whether the transfer deed dated 09.03.2009 is legal and valid*” was framed on 14.11.2022 and onus to prove the said issue was upon the respondent-defendant. Reading of these issues shows that both the issues are same. Both the parties had to lead their evidence in affirmative with regard to respective issues. Plaintiff-petitioner had to

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lead evidence that transfer deed dated 13.03.2009 is illegal null and void and respondent-defendant had to lead evidence that said document was a legal document. Plaintiff-petitioner had already led her evidence in affirmative qua issue No.1 and after framing issue No.1-A respondent-defendant had to lead his evidence in affirmative as the onus to prove the said issue was on him. The petitioner cannot lead evidence in rebuttal in discharge of her onus which was fastened upon her at the time of adducing evidence in affirmative.

7. No benefit of the judgments referred to by learned counsel for the petitioner can be given to the petitioner as the facts of the same are distinguishable from the facts of the present case.

8. This Court in **Surjit Singh's** case (supra) has held as under: -

“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

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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

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Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra).

9. In **Avtar Singh's** case (supra), this Court held as under: -

“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.

Question No.2 i.e. whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendant?

From a plain reading of the provisions of Order 18 Rule 3 CPC and the principle of law enunciated by the Division Bench in Surjit Singh's case (supra), it is axiomatic that in a case, where there are several issues, and the burden of proof some of which lies upon the defendant, plaintiff who is conscious to the lis and alive to the matter in issue, he can adduce his evidence in entirety vis-a-vis all the issues including those onus of proof of which is upon the

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defendant. Or having led the evidence in affirmative, as regards the issues, the onus of proof of which is upon the plaintiff himself, he can reserve his right to lead evidence in rebuttal. Needful to assert, leading evidence in rebuttal is also a part of the plaintiff's evidence. Whether he leads it in one go qua all the issues and close his evidence or reserve his right to lead rebuttal evidence.

Question No.3 i.e. whether Rule 3 of Order 18 of the Code if read in conjunction with Order 18 Rule 1 of the Code widens the scope of evidence in rebuttal?

On a due and thoughtful consideration, we are of the view that the provision, which perhaps intended to be referred to by the learned Single Judge was Order 18 Rule 2 and not Order 18 Rule 1. As Order 18 Rule 1, only defines as to which of the parties has a right to begin first. Be that as it may. Provisions of Order 18 Rule 2 and Order 18 Rule 3 CPC are mutually exclusive and have their independent domains, and thus, operate in different situations. We deem it necessary to refer to the provision of Order 18 Rule 2 CPC, which reads as thus:

“2. Statement and production of evidence— (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.”

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10. In view of the above, this Court does not find any illegality or perversity in the impugned order, which may call for any interference by this Court by exercising its revisional jurisdiction.

11. Dismissed.

14.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No