

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**125****CR No.1032 of 2024****Date of Decision : 05.03.2024**

Jeet Singh

....Petitioner

VERSUS

Ramanjit Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Namit Gautam, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the order dated 15.01.2024 whereby application filed by the plaintiff-respondent No.1 for allowing the handwriting expert to inspect and take photographs of impugned Will (Ex.D5) for comparison with the signatures of Gurdeep Singh on the original lease deed dated 25.08.2005 has been allowed.

2. The brief facts relevant to the present case are that the plaintiff-respondent No.1 herein filed a suit for declaration that the plaintiff-respondent No.1 is joint owner in possession of 1/4th share in the property left by Gurdeep Singh as described in detail in the plaint. Plaintiff-respondent No.1 also sought relief of separate possession of 1/4th share by way of partition. It is further the case set up that Gurdeep Singh had died intestate on 20.02.2007 and was survived by his widow, two sons and two daughters and the property was inherited by them in equal shares. The

mother of the plaintiff-respondent No.1 died intestate on 02.10.2013 and was survived by the plaintiff-respondent No.1 and defendant Nos.1 to 3. It is further the case set up that the defendant-petitioner herein had got transferred the property in his own name on the basis of an unregistered Will dated 22.01.2007 and had obtained a letter of probate from a Court at Kanpur. The Will was also challenged as being forged and fabricated. The suit was contested by the defendant-petitioner herein as well as the other defendants. In the suit the stand taken by the defendant-petitioner was that the probate qua the unregistered Will dated 22.01.2007 had already been issued. On the basis of pleadings issues were framed. Issue No.4 reads as under :

4. Whether deceased Gurdeep Singh has executed legal and valid Will dated 22.01.2007 in favour of defendant No.1 ? OPD

3. Plaintiff-respondent No.1 while closing her evidence closed it in the affirmative. After the defendant-petitioner had led his evidence, an application was filed for allowing a handwriting expert to inspect and take photographs of the impugned Will for comparison with the signatures of Gurdeep Singh on the original lease deed dated 25.08.2005 executed by Gurdeep Singh in favour of State Bank of Patiala. The said application was contested by the defendant-petitioner herein stating therein that in rebuttal evidence plaintiff-respondent No.1 cannot examine an expert witness. The said application was allowed vide the impugned order dated 15.01.2024. Hence, the present revision petition.

4. Learned counsel for the defendant-petitioner would contend that the plaintiff-respondent No.1 had challenged the Will in the plaint on

the ground that the same was forged and fabricated and thus it was incumbent upon the plaintiff-respondent No.1 to have led evidence qua the Will being forged and fabricated and should have examined the handwriting expert while leading her evidence.

5. Heard.

6. It is not disputed by learned counsel for the defendant-petitioner that the onus of issue No.4 i.e. the issue regarding the validity of the Will has been cast upon the defendant-petitioner herein. Further still, plaintiff-respondent No.1 admittedly closed her evidence in the affirmative on 27.01.2020. It has been held by a Division Bench of this Court in case of **Surjit Singh & Ors. Vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** that the plaintiff has a right to lead evidence in rebuttal on the issue onus of which was on the defendant. It was held in the said case 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).”

7. In view of the above, I do not find any merits in the present revision and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

05.03.2024

jk

(ALKA SARIN)
JUDGE

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