

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1433-2024 (O&M)
Date of Decision:-19.04.2024

Rajesh Kumar and Others

... Petitioners

Versus

Sonia and Another

... Respondents

-. -

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

-. -

Argued by :-

Mr. Puneet Sharma, Advocate
for the petitioners.

Mr. Manish Kumar Singla, Advocate with
Mr. Parminder Singla, Advocate
for the caveators/respondents.

-. -

RITU TAGORE, J.

1. This revision petition is preferred by petitioners (defendants before the learned Trial Court) against the order dated 07.02.2024 (Annexure P-9) passed by learned Civil Judge (Junior Division), Fatehgarh Sahib in Civil Suit No.1211 of 2022 titled as Sonia & Another vs. Rajesh Kumar & Others, allowing the application under Section 151 CPC dated 15.01.2023 (Annexure P-7), thereby granting permission to respondents (plaintiffs before

the learned trial Court) to lead rebuttal evidence as well as additional evidence.

2. Learned counsel for the petitioners contended that learned Trial Court committed material irregularity in allowing the application against the settled legal position of law which provides that plaintiff has to stand on its own legs and lead evidence on the issues, onus of which is on the plaintiff. Learned counsel urged that it is a matter of record that respondents instituted a suit for declaration, pleading the Will dated 25.10.2012 to be declared as forged and fabricated document and mutation No.942 of village Bhatmajra, Tehsil and District Fatehgarh Sahib and mutation No 2160 of village Khuda Lahora, Hadbast No.348, Chandigarh as null & void and nonest, with further relief of joint possession of the suit land and permanent injunction, restraining the petitioners from selling and changing the nature of the suit property as detailed in the plaint (Annexure P-1). It is stated that petitioners on appearance before the learned trial Court filed the written statement (Annexure P-2) denying the averments of the respondents. Replication (Annexure P-3) was filed by the respondents controverting the assertions of the petitioners with respect to the execution of Will and other pleas.

3. The learned counsel stated that from the pleadings of the parties, learned trial Court framed the issues including additional issue on the Will dated 25.10.2012. On the request of respondents original Will was also produced in the Court.

4. The learned counsel stated that respondents were aware of *inter-se* dispute between the parties from the beginning and before presenting

their evidence on the framed issues as such, had all the opportunity to lead evidence that was required to be led to prove their case. Learned counsel stated that it is after closure of the petitioners' (defendants) evidence, the respondents filed an application dated 15.01.2023 (Annexure P-7) to examine the handwriting expert and to place on record the sale deeds by way of additional evidence. Stating further, learned counsel urged that before closing the evidence, respondents did not reserve their right to lead rebuttal evidence. Now, they cannot be permitted to lead evidence in rebuttal. Learned counsel also argued that the respondents had the knowledge and were in possession of the sale deeds even prior to the filing of suit, and respondent No.1 (plaintiff) as PW-1 admitted the same in her testimonial account. It is stated that learned Trial Court completely failed to notice that respondents were not at all diligent in pursuing their case and committed serious jurisdictional error in allowing the application against the settled principles of law and rules of procedure in admitting the evidence on behalf of the party to the litigation. A prayer is, thus, made to allow the revision and impugned order dated 07.02.2024 (Annexure P-9) be set-aside. In support of his contention, learned counsel has referred to authorities titled as **National Fertilizers Ltd., Bhatinda vs. Municipal Committee, Bhatinda and Another, 1982 PLR 322; Shri Shyam Lal son of Shri Goverdhan and Another vs. M/s. Technico Agri. Sciences Limited & Others, 2016 Latest HLJ (H.P.) 1633 and Saurav Jain vs. Mohan Lal, 2023(2) Law Herald 954**; wherein it was held that additional evidence cannot be led as a matter of right.

5. Per contra, learned counsel for the respondents supported the impugned order, stating that same is valid and is based on sound judicial canons of law settled through various judicial precedents. Learned counsel stated that even if factum of Will was in knowledge of the respondents they were not supposed to lead evidence in negative to prove that Will was not genuine. It is only after evidence led by petitioners in terms of execution of Will, initial onus of which lied upon them, as per issued No.4-A (framed on 16.08.2023), thereafter the respondents were to lead evidence in rebuttal to show that Will was forged and not genuine. Addressing further, learned counsel stated that in present case, respondents have closed their evidence in affirmative only and has right to lead rebuttal evidence on the issues; burden of proving some of the issues out of several issues, lied on the petitioners (defendants). The closing of affirmative evidence, thus, itself implies that they have reserved their right to lead evidence in rebuttal to evidence led by petitioners. The learned counsel stated that impugned order allowing the respondents to lead evidence in rebuttal is valid in eyes of law. In support of his contention, learned counsel for the respondents referred to judicial pronouncements titled as **Smt. Jaswant Kaur and Another vs. Devinder Singh and Others, 1983(2) R.C.R. (Rent) 57; Smt. Kanwaljit Kaur Bedi vs. Paramjit Singh Sawhney and Others, 2019(4) PLR 412 and Rajwinder Singh vs. Mangal Singh and Others** passed in **CR-686-2020** decided on **15.12.2023**; and **Sharanjit Kaur vs. Smt. Parveen Mahal and Others, 2023(1) Law Herald 832.**

6. Submitting further, learned counsel argued that right to adduce additional evidence is not restricted by procedure laid down under Order 18

Rule 3, CPC. It is an independent right. In the present case, respondents in the application, specifically pleaded that petitioners did not examine the signature of deceased Daya Krishan on the Will and intentionally kept silent on the above aspect that impelled the respondents to place on record sale deeds and examine finger print expert to compare the signatures of deceased appearing on disputed Will dated 25.10.2012. Learned counsel stated that aforesaid evidence is necessary for complete and just decision of the case. Taking all these facts and circumstances into consideration, learned trial Court rightly allowed the application (Annexure P-7). By pleading no merit in revision, learned counsel for the respondents prayed for its dismissal.

7. I have heard the learned counsel for the petitioners as well as for the caveators (respondents-plaintiffs) and have gone through the paper book.

8. The facts as gleaned from the paper-book and put forth by the learned counsel for the parties in their arguments, it is explicit that respondents (plaintiffs) filed a civil suit (Annexure P-1) for declaration, claiming their joint possession in the suit properties to the extent of 1/6th share each on the basis of natural succession, being legal heirs of deceased Daya Krishan, their father and challenged Will dated 25.10.2012 alleged to be executed by Daya Krishan in favor of defendants as illegal, null-and-void and a forged and fabricated document and also challenged subsequent mutations entered on the basis of Will and decree of permanent injunction, restraining the defendants for alienating and changing the nature of suit property. The petitioners on appearance filed written statement (Annexure P-2) controverted the stand of the respondents. In the replication (Annexure P-3) respondents re-asserted their stand by denying the version of the

petitioners. From the pleadings of the parties, the learned Trial Court framed issues on 02.08.2023 and additional issues on 16.08.2023, which are as under:-

Issues framed on 02.08.2023

1. Whether the plaintiff is entitled to relief of Declaration, as prayed for? OPP.
2. Whether the plaintiff is entitled to relief of Joint Possession of property mentioned at letters X and Y? OPP.
3. Whether the plaintiff is entitled to relief of Permanent Injunction, as prayed for? OPP.
4. Whether the suit is not maintainable? OPD.
5. Relief

Additional Issues framed on 16.08.2023

- 4-A Whether Daya Krishan executed the WILL dated 25.10.2012 in favour of defendants? OPD
- 4-B Whether the suit is within limitation? OPP.
- 4-C Whether the plaintiff have no cause of action or locus standi to file the present suit? OPD.
- 4-D Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD.
- 4-E Whether the present suit is the result of concealment of material facts by the plaintiffs? OPD.

9. From the above, it is made out that several issues were framed from the pleadings of the parties. Onus of some of the issues was placed

upon the plaintiffs and some on the defendants. Onus to prove issue No.4-A was placed on the petitioners (defendants). Order 18 Rule 3, CPC relates to the evidence where there are several issues and burden of some of which lies on the defendant. Order 18 Rule 3, CPC reads as follows :-

"Evidence where several issues:-

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produce by the party beginning; but the party beginning will then be entitled to reply generally on the whole case."

10. From a perusal of the Rule (*ibid*), it is clear that in case the burden of proving some of the issues lies on the defendant; the plaintiff while starting his evidence may lead the same on all the issues, including those the burden of which is on the defendant or reserve his right to lead evidence on the issues the burden of which is on the defendant after the latter has produced his evidence. In view of the above-narrated Rule, respondents (plaintiffs) are entitled to lead rebuttal evidence with respect to the issue, onus to prove whereof is on the defendants. The plaintiffs are not supposed to lead evidence in negative to prove the Will being fabricated or not genuine. It is only after evidence led by the petitioners (defendants) in terms

of execution of the Will is led, the respondents would lead evidence to rebut the same and assert their version of the Will being not genuine.

11. Further it is not the case, where respondents did not reserve their right to lead evidence in affirmative. The downloaded copy of the *Zimni* order dated 13.09.2023 shows that respondents (plaintiffs) after tendering documents, closed their evidence in affirmative. The petitioners have not disputed this order. In **Smt. Jaswant Kaur's case** (*supra*), the Division Bench of this Hon'ble Court by referring to Order 18 Rule 3, CPC observed that plaintiff closing his evidence in affirmative implies that he reserved his right to lead evidence in rebuttal to evidence led by respondents; and option to reserve rights of rebuttal can be exercised before other party begins its evidence. Here in the present case, petitioner exercised that option is apparent from the *zimni* order dated 13.09.2023. Thus, in the given facts, permission granted to the respondents to lead rebuttal evidence and additional evidence by the learned Trial Court vide impugned order dated 07.02.2024 (Annexure P-9) cannot be taken as arbitrary and without jurisdiction.

12. Of-course, additional evidence, cannot be led as a matter of right, for that a case needs to be made out. In the present case, respondents specifically averred in their application (Annexure P-7) that petitioners have not intentionally examined the signatures of deceased Daya Krishan, on the alleged Will, this necessitated them to lead further / additional evidence. The learned trial Court took all relevant facts and found a fit case for permitting the respondents to lead additional evidence.

13. The case law referred by the counsel for the petitioners is distinguishable. In **National Fertilizer’s case** (*supra*) evidence of the petitioner was closed by Court order. In **Shri Shyam Lal’s case** (*supra*) learned counsel for the petitioner made statement simpliciter of closing evidence on behalf of the plaintiff without disclosing that it was in affirmative only. As an upshot of aforesaid discussion, this Court finds no merit in revision petition and is, hereby, dismissed.

14. The opinion expressed herein above, is purely restricted to the issue in hand and same be not construed as any expression on the merits of the case.

15. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

19.042024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No